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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v. 19 CR 561 (LAP)
STEVEN DONZIGER, 11 CR 691 (LAK)

Defendant. BENCH TRIAL

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New York, N.Y.
May 10, 2021
9:50 a.m.

Before:

HON. LORETTA A. PRESKA

District Judge

APPEARANCES

RITA M. GLAVIN
SAREEN K. ARMANI
BRIAN P. MALONEY
Special Assistant United States Attorneys

LAW OFFICE OF RONALD L. KUBY
Attorneys for Defendant

BY: RONALD L. KUBY
RHIDAYA S. TRIVEDI
-AND-

OFFIT KURMAN PA

BY: MARTIN GARBUS

GIBSON DUNN & CRUTCHER
Attorneys for Interested Parties
BY: REED M. BRODSKY

ALSO PRESENT: GRACE GILL, Paralegal

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1 (In open court)

2 THE COURT: Counsel, thank you for coming in early to
3 talk about logistics. My view though is in light of
4 Mr. Brodsky's motion of last night, we probably ought to get
5 that finished so his people can do whatever kind of work they
6 need to do.

7 Mr. Brodsky, are you here?

8 MR. BRODSKY: Yes, your Honor.

9 THE COURT: Yes, sir.

10 I have your motion. Why don't you make yourself
11 comfortable perhaps up here in the jury box, since there's no
12 one else sitting there.

13 MR. KUBY: Good morning, Judge. I'm sorry to
14 interrupt your agenda with the first words out of my mouth. I
15 just want to make sure Mr. Donziger has actually managed to get
16 in. And I'm not seeing him. Okay.

17 MS. TRIVEDI: It's my understanding that he's coming
18 through security right now, your Honor.

19 THE COURT: All right. We're not really in the trial
20 right now; we're doing other matters. So we're going to get
21 going so that we can move on to the substance of the case.

22 MR. KUBY: That's the Court's ruling.

23 I would note that I would like Mr. Donziger to be
24 present for the argument on the subpoenas, which just kind of
25 arose --

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1 THE COURT: Mr. Kuby, everybody was on notice it was
2 9:45. It's now ten of ten.

3 We'll call down and see if he's there --

4 MR. KUBY: That would be great. Thank you, Judge.

5 THE COURT: -- and have him sent up.

6 MR. KUBY: Thank you.

7 THE COURT: But this will not continue, you either
8 arrive on time or too bad.

9 MR. KUBY: Judge, he has made every court appearance
10 on time --

11 THE COURT: Counsel. This is the trial.

12 MR. KUBY: -- since the history of this case.

13 It's not a matter of this continuing or not
14 continuing. These are COVID times. There's problems at the
15 door. This is not a pattern; this is not a practice. This is
16 one issue today that the Court --

17 THE COURT: All right. But, counsel, people take care
18 to get here on time. All these other people are here on time.

19 MR. KUBY: They get paid a lot more, Judge.

20 THE COURT: I'm sorry, counsel.

21 Mr. Kuby, did you want to be heard on the subpoena
22 issue, the clarification issue?

23 MR. KUBY: I'd rather respond to whatever argument the
24 movant is making, if the movant intends to argue.

25 THE COURT: Mr. Brodsky, do you want to add anything

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1 to your papers or what?

2 MR. BRODSKY: I'm happy to answer any questions, your
3 Honor with respect to --

4 THE COURT: If you're going to speak, would you be
5 kind enough to speak in the box. And if you are in counsel's
6 box, you are permitted to take off your masks.

7 And counsel, one of the things I was going to go over
8 with you all is that in counsel's booth and in the witness box,
9 the occupant need not wear his or her mask. When you are
10 finished speaking, change the microphone cover. We have
11 spares. We don't have to spray documents anymore, so you can
12 keep that in mind.

13 Mr. Brodsky, do you want to just summarize for counsel
14 what the papers said.

15 MR. BRODSKY: Yes, your Honor.

16 On behalf of Gibson, Dunn & Crutcher, with respect to
17 your Honor's order issued yesterday, we had requests for a
18 modification and clarification.

19 With respect to the subpoena document request number
20 13, which asks for all -- which your Honor ruled, based on a
21 modification of the request for all quarterly billing --
22 billings in terms of, excuse me, the amount of fees and the
23 hours to be provided on a quarterly basis from April 15th, 2019
24 through the present, through the date of the subpoena.

25 We requested, your Honor, in light of the

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1 confidentiality of the detailed information of the precise
2 numbers, that we would be willing to stipulate that over the
3 last -- since April 15th, 2019, Gibson, Dunn & Crutcher has
4 represented Chevron on dozens of matters; that Chevron is a
5 major client of Gibson, Dunn & Crutcher; and that Gibson, Dunn
6 & Crutcher has billed millions of dollars in fees to Chevron
7 since on or about April 15th, 2019.

8 In our view, the witnesses who have been called by --
9 subpoenaed by the prosecutors, our understanding is they do not
10 know these aggregated quarterly numbers; they are not aware of
11 all the matters that Gibson, Dunn & Crutcher handles on behalf
12 of Chevron. Some of those matters are public, some of those
13 matters are very confidential.

14 And to the extent that Mr. Kuby wants to cross-examine
15 a Gibson, Dunn & Crutcher partner -- who I understand will be
16 called today as one of the first witnesses, Ms. Anne Champion.
17 To the extent Mr. Kuby wants to cross-examine her about bias or
18 prejudice, she is aware of all those facts. She is also aware
19 that she represented Chevron herself. She filed, along with
20 others --

21 THE COURT: In connection with the underlying civil
22 matter.

23 MR. BRODSKY: Correct, your Honor, in connection with
24 the underlying civil matter. Ms. Champion herself billed time
25 to Chevron on that matter and is aware of that. She's aware of

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1 the general fact of the millions of dollars in legal fees. And
2 she also is aware that she and others on behalf of the client
3 Chevron moved for civil contempt on many of the same
4 allegations alleged in the criminal contempt. So to the extent
5 Mr. Kuby wants to allege bias, he has all of that to
6 cross-examine Ms. Champion or Mr. Thomson or Mr. Mastro or
7 Ms. Neuman about.

8 And our second request, your Honor, was to clarify.
9 Your Honor's order was very clear with respect to request
10 number one, which we are -- are the email communications or any
11 written communications related to this case between Gibson,
12 Dunn & Crutcher and the special prosecutors. We are collecting
13 and preparing that. There are about 300 or so, give or take,
14 communications which we will be prepared to provide to the
15 defense and the special prosecutors at the time Ms. Champion
16 testifies today.

17 We also have been able to prepare a log of the
18 meetings that any of the Gibson Dunn partners met with the
19 special prosecutors. We prepared dates and the amount --
20 approximate amounts of time.

21 But we are asking for clarification with respect to
22 requests two and three, which it may be the Court's intention
23 that, as you modified request one, it supplanted request two
24 and three. Request two also asks for a list of every contact
25 by phone or otherwise between Gibson Dunn and the special

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prosecutors. And that would require, your Honor, us obtaining all the hardline telephone records of the firm for some partners.

As of yesterday, when we received the order, we did start pulling what mobile cell phone records were available during the pandemic, myself and Mr. Baumgardner, Shane Baumgardner, my colleague. When we had conversations with the special prosecutors, we did so by mobile phone because we were out of the office. That would require pulling the mobile records. We were able to pull some, but not all. We did contact Verizon, and we haven't heard from Verizon yet as of last night to try to pull those records.

With respect to request number three, all of the information -- it asks for all information reflecting the existence of any of the meetings between the special prosecutors and Gibson, Dunn & Crutcher partners, the witnesses.

There will be emails, your Honor, between, for example, myself and/or Shane Baumgardner, two other partners in the firm, such as the Office of the General Counsel, with respect to those meetings. There will be internal communications. It is our position that all of those communications that reflect the existence of these meetings of privilege, their request would also sweep in any notes that were taken by us representing the witnesses during the meetings

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1 with the special prosecutors. It's our position those are
2 privileged, and we would have to log all of those internal
3 communications.

4 We ask your Honor for clarification if your Honor's
5 modification, request number one, supplanted requests two and
6 three; or if not, if your Honor would consider extending the
7 period of time or modifying it in some way, given these
8 difficulties of producing those --

9 THE COURT: May I ask you for clarification?

10 If there is a log of meetings, then would it not be
11 redundant to have documents regarding the existence of
12 meetings?

13 MR. BRODSKY: It would be redundant, your Honor.

14 Their request number three though calls for all
15 documents.

16 THE COURT: Okay. And I wasn't sure that I understood
17 request number three to pertain to Gibson Dunn/Gibson Dunn
18 meetings, but only to Gibson Dunn/private prosecutor meetings.

19 Am I wrong in that?

20 MR. BRODSKY: Well, I would be happy with that
21 reading. Another way to read number three would be all
22 information reflecting any such communications.

23 THE COURT: I see. All right.

24 MR. BRODSKY: And that could include an internal
25 communication that reflects the existence of a meeting.

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1 THE COURT: Okay. Let me ask Mr. Kuby, maybe going
2 for the easiest first. Is number three meant to address
3 internal Gibson Dunn meetings?

4 MR. KUBY: It is, to the extent that those internal
5 Gibson Dunn Crutcher meetings reflect matters related to the
6 private prosecutor, yes.

7 THE COURT: May I ask you this question.

8 MR. KUBY: Sure.

9 THE COURT: Would the listing of the log of meetings
10 be sufficient? It seems to me that counsel's point about
11 internal Gibson Dunn meetings is that most of that is not going
12 to be admissible information. But the fact of the meeting, if
13 it is demonstrated in a log, would at least let you know that
14 there was such a meeting.

15 MR. KUBY: The Court is certainly correct about the
16 latter part. As to the content of the communications, however,
17 the short answer is we don't know what we don't know. We do
18 know that there have been extensive numerous meetings with the
19 special prosecutor; dozens, hundreds of hours of meetings.

20 How Gibson Dunn Crutcher approached the issue of the
21 prosecution, as well as approached the issue of how they were
22 preparing their partners, four of whom are named on the witness
23 list -- although I suspect, in light of the Court's comments
24 last night, we may see fewer of them than we originally
25 planned. But to the extent that those witnesses are involved

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1 in some discussion as to what to say or not say to the special
2 prosecutor, I think to the extent that a privilege exists, it's
3 easily overcome. And I'm not quite sure what that privilege
4 is. Is there some sort of witness prep to talk to the private
5 prosecutor privilege? I just -- I legitimately don't know.

6 THE COURT: Mr. Brodsky.

7 MR. BRODSKY: Yes, your Honor.

8 I, myself, and Shane Baumgardner, an associate working
9 with me, represented Gibson, Dunn & Crutcher, as well as each
10 of the witnesses who were subpoenaed to testify by the special
11 prosecutors. So my communications with the Office of General
12 Counsel regarding any meetings with the special prosecutors
13 would be privileged. I'm communicating or I was communicating
14 confidential information for the purpose of conveying to the
15 Office of General Counsel and obtaining their advice about how
16 to handle the -- this matter in which Gibson, Dunn & Crutcher
17 partners are witnesses, were not a party to the proceeding. So
18 those communications fall within the attorney-client privilege.

19 And my thoughts and impressions of any meetings with
20 the special prosecutors would fall within the attorney work
21 product doctrine. None of this is relevant at all, and
22 Mr. Kuby has not made any showing in meeting his burden how any
23 of that information could possibly be relevant to the charges
24 against Mr. Donziger in this case.

25 THE COURT: I assume that some communications between

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1 Gibson Dunn partners and the special prosecutor is included in
2 the 3500 material.

3 MR. BRODSKY: Your Honor, we've never seen the 3500 --

4 THE COURT: I'm asking the wrong person.

5 Ms. Glavin.

6 MS. GLAVIN: Yes, your Honor.

7 For each of the interviews that the special
8 prosecutors had --

9 THE COURT: May I ask you, you're entitled to remain
10 seated, if you want. You too, Mr. Kuby, you're probably even
11 further up.

12 MR. KUBY: Oh, thank you, Judge.

13 THE COURT: So that you can speak into the microphone
14 so the court reporter can hear us.

15 MS. GLAVIN: Your Honor, for each of the meetings that
16 the special prosecutors had with the Gibson Dunn witnesses that
17 we intend to call at trial, there was an FBI agent present.
18 And notes were taken and a 302 was prepared. So the defense
19 has been provided with an FBI 302 and/or their notes during
20 each of the meetings. I think there was one meeting in
21 November with Gibson Dunn partners.

22 THE COURT: Doesn't matter.

23 MS. GLAVIN: But they have the information; they know
24 how many meetings we had with each of the witnesses that were
25 called, and they have notes or FBI 302s of what was prepared

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1 from those meetings.

2 THE COURT: Okay.

3 Mr. Kuby, what are you looking for in addition to
4 that?

5 MR. KUBY: Well -- sorry, have to get used to that.

6 THE COURT: Whatever makes you comfortable; we both
7 need to be able to hear you.

8 MR. KUBY: Right. I understand.

9 We have received numerous 302s and well-indexed 3500
10 materials. The Court is in receipt of those as well.

11 THE COURT: I have them all memorized, Mr. Kuby.

12 MR. KUBY: Nor do I, Judge.

13 And I haven't counted them all, but I suspect they are
14 substantially less than 300 communications or 300-plus that
15 Mr. Brodsky, I believe, represented exist.

16 Number two, one 302, for example -- can you get it up
17 on the screen, Grace? If you'll just give me a second, Judge,
18 to illustrate what I'm trying to talk about here.

19 We'll work out the bugs. I'll make a representation.

20 The representation is that at one of these meetings,
21 which I believe included Mr. Maloney, Ms. Armani, Ms. Glavin,
22 Reed Brodsky, and Shane I believe by telephone, Agent Iorio, I
23 think Agent Eckstut was there.

24 THE COURT: Spell those for the court reporter please,
25 sir. Agent?

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1 MR. KUBY: I'm going to ask Sister Glavin if she would
2 not mind doing that.

3 MS. GLAVIN: It's Agent Emily Eckstut, E-C-K-S-T-U-T;
4 and Agent Nicholas Iorio, I-O-R-I-O.

5 THE COURT: Thank you.

6 MR. KUBY: And that 302 contains exactly nothing about
7 anything that was said at that meeting.

8 Now, presumably this was just not, like, Let's all get
9 together and hang out at Chevron's and the taxpayers' expenses.
10 There is another very similar 302, where the one thing that is
11 recorded by the FBI is being done at that meeting, is that the
12 witness, Ms. Champion, provided a cell phone number to Agent
13 Iorio so he could contact her to coordinate trial matters.
14 That's the entire contents of that conversation.

15 So again, I'm just going to guess that this was just
16 not an in-person exercise in billing lots of hours; that, in
17 fact, other things happened at that meeting that the FBI
18 agents, for whatever reason, elected not to write down or were
19 instructed not to write down.

20 So no, the fact that we've received a lot of 3500
21 material -- and I am not faulting Ms. Glavin. Obviously
22 there's a lot of documents in this case. But we have not
23 received the things that, in fact, we're looking for.

24 THE COURT: Well, but the question is, first of all,
25 are you entitled to it; and second of all, is it privileged?

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1 And I'm not sure there's a showing, but let me -- does anyone
2 wish to comment so far?

3 MR. BRODSKY: Your Honor, I would just note to clarify
4 for Mr. Kuby's benefit, the 300-plus communications that we
5 will be producing are communications between Reed Brodsky,
6 Shane Baumgardner, perhaps Randy Brown, an associate of mine,
7 and the special prosecutors, nearly all of which were to
8 coordinate scheduling a call or scheduling a meeting between
9 the Gibson Dunn witnesses and the special prosecutors. None of
10 these written communications are between the witnesses and the
11 special prosecutors, because they don't exist.

12 THE COURT: All right.

13 MR. KUBY: Judge, to the extent --

14 THE COURT: Yes, sir.

15 MR. KUBY: May I?

16 THE COURT: Yes, sir.

17 MR. KUBY: To the extent that any of these documents
18 that Mr. Brodsky is talking about, whether writ large or writ
19 small, were sent to the special prosecutor, obviously there's
20 no question of privilege. I mean, unless --

21 THE COURT: I don't hear him arguing privilege as to
22 those -- I'm sorry, only one of us can speak at a time.

23 I don't hear Mr. Brodsky arguing any privilege as to
24 those 300 emails. Indeed, I think he says that they are mostly
25 scheduling emails.

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1 MR. BRODSKY: Correct, your Honor.

2 MR. KUBY: Okay. Then that's fine. That's an easy
3 one then. We get all of those, right, Judge?

4 THE COURT: I believe Mr. Brodsky just offered them to
5 you.

6 MR. KUBY: And in addition, I mean, to be told that
7 they are willing to stipulate that they have billed millions of
8 dollars to Chevron within the time frame we requested, millions
9 is a starting point; it's not an ending point. So is it a
10 million, is it 10 million? I mean, we do know from admittedly
11 quotes -- extrajudicial sources quoting judicial sources that
12 Chevron has billed the Ecuadorian government for \$800 million
13 in the underlying litigation.

14 So are we talking about a million dollars? Are we
15 talking about 10 million, 50 million, 100 million? I mean, it
16 would be nice to have an order of magnitude at least.

17 THE COURT: What do you say to counsel's suggestion
18 that beyond knowing that Chevron is a major client of the firm
19 to which the firm bills millions of dollars a year, for any
20 additional showing of bias on the part of the individuals, they
21 have to have some idea of the number. Counsel's representing
22 anyway -- and obviously you can cross-examine -- that they
23 don't have that number.

24 MR. KUBY: All right, Judge. If they don't have that
25 number, then they, as individuals, cannot produce that

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1 information. I agree.

2 THE COURT: That's not counsel's argument.

3 I believe his argument is that for -- let's just use
4 your number. For the \$800 million number to produce any bias
5 on the part of the partner, the partner would have to know that
6 the number was \$800 million.

7 MR. KUBY: Yes. That's correct.

8 I will note, however, that the partner who's scheduled
9 to testify today was, in fact, the partner who submitted the
10 detailed fee requests to Judge Kaplan, covering the
11 post-judgment litigation from January 8th, 2018, to more or
12 less June of 2019, a little over \$3 million billed. So it does
13 seem like Ms. Champion has some sort of duties besides simply
14 logging her time.

15 THE COURT: Okay. And number one, I guess obviously
16 you have those post-judgment fee requests because they were
17 litigated.

18 MR. KUBY: Correct.

19 THE COURT: Okay.

20 And so then you can ask her, What else do you know?

21 MR. KUBY: I could.

22 THE COURT: All right.

23 MR. KUBY: But, Judge, I just want to be clear,
24 because there were, I believe, well over a dozen meetings that
25 I know of between the special prosecutor and her team, their

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1 team, and the Chevron team represented by Gibson Dunn Crutcher.

2 THE COURT: I think counsel told you he's going to
3 give you a lot of those meetings; is that right, Mr. Brodsky?

4 MR. BRODSKY: Yes, your Honor.

5 And just to be clear, to clarify for Mr. Kuby's
6 benefit, the Gibson, Dunn & Crutcher partners who went to meet
7 with Ms. Glavin and her special prosecution team, did not bill
8 for their time when they met with Ms. Glavin and the special
9 prosecution team, and they were not there to represent Chevron.
10 They were there to answer questions that the special
11 prosecutors asked when they testify. They are not testifying
12 as lawyers on the stand for Chevron; they are testifying
13 because they've been subpoenaed, and they will answer the
14 questions truthfully.

15 MR. KUBY: Well, I do very much appreciate that piece
16 of information that, in fact, Gibson Dunn Crutcher indeed
17 donated millions of dollars worth of time to --

18 THE COURT: Counsel, Mr. Kuby, Mr. Kuby --

19 MR. KUBY: Judge.

20 THE COURT: -- the rally was outside --

21 MR. KUBY: Judge, I'm not rallying. I'm trying to
22 make a legal point.

23 THE COURT: Which is what?

24 MR. KUBY: Which is if they are billing for their
25 time, their animus is purchased. If they are simply donating

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1 their time because they think it's the right thing to do, to
2 try to criminalize Mr. Donziger in this proceeding --

3 THE COURT: Counsel, counsel, counsel, we live in a
4 country where the rule of law prevails.

5 MR. KUBY: Right.

6 THE COURT: You get a subpoena from a prosecutor, you
7 have to answer it. You don't do it because it's a nice time of
8 day to do it. So don't talk to me about that.

9 MR. KUBY: Excuse me, Judge, if I can say one more
10 thing.

11 I don't know of any subpoena that requires a potential
12 witness not before a grand jury and not in a deposition to sit
13 down and meet for hundreds of hours with the special
14 prosecutor.

15 THE COURT: Okay. Then you can make that argument.

16 MR. KUBY: I intend to.

17 THE COURT: Okay. But today is not the day.

18 MR. KUBY: Okay. Well, maybe this afternoon.

19 But I just want to be clear, and I appreciate
20 Mr. Brodsky's clarification, that this was all a donation by
21 GDC. And so therefore, I don't really need those records,
22 because they don't exist.

23 THE COURT: All right. That helps us then.

24 MR. KUBY: We're making great progress, Judge.

25 THE COURT: We are making great progress.

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1 So I agree with Mr. Kuby that in order for the
2 individual partner to have been influenced by approximate total
3 number of billings -- and we're using as a fictional number
4 Mr. Kuby's number of \$800 million, he or she would have to know
5 about it. So as Mr. Brodsky suggests, Mr. Kuby is completely
6 free to cross-examine those partners about that.

7 The one thing that I would suggest is that the total
8 annual billing number for the relevant time period be disclosed
9 under seal to the Court so I can use it in evaluating bias.

10 Mr. Brodsky says he's going to produce the 300 emails
11 and a log of the meetings. With respect to internal meetings,
12 it seems to me that they are likely to be privileged, and
13 counsel has not made a showing of why they won't be. And the
14 burden of producing a privilege log is a mess, so I will not
15 require that to be done.

16 Is there anything else on the telephone calls,
17 Mr. Kuby?

18 MR. KUBY: No, Judge.

19 But let me heartily concur with the Court's notion of
20 the burdensomeness of producing privilege logs. I understand
21 the Court's ruling and I fully agree.

22 THE COURT: All right.

23 With respect to the telephone logs, I will not require
24 that either, in light of the burdensome nature of it and the
25 shortness of the time.

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1 Have we finished with two and three?

2 MR. BRODSKY: I believe so, your Honor.

3 THE COURT: Okay. Is there anything else?

4 MR. BRODSKY: Just to clarify, your Honor, the \$800
5 million is a complete fictional number and would not be
6 responsive --

7 THE COURT: That's fine. I think I made it very
8 clear, and I think Mr. Kuby made it very clear, that we've
9 considered that to be not God's Holy Grail.

10 MR. BRODSKY: In terms of, your Honor, the privilege
11 logs, the reason why we are asking for that is they are all
12 privileged, and we received the order yesterday and the witness
13 is going on today. So the burden is really based on the amount
14 of time; it is not based on the fact that we been given two
15 weeks or four weeks, we would have been able to pull together a
16 privilege log and happily done so.

17 THE COURT: Okay. But here's the deal: Rule 17(c)
18 discovery is not civil discovery. And as we pointed out in the
19 order yesterday, the burden is on the subpoenaing party to
20 demonstrate what's there; that it will be admissible, among
21 other things.

22 I agree with Mr. Kuby, we don't know what we don't
23 know and, therefore, the subpoenaing party has not made the
24 requisite showing under Rule 17(c).

25 Is there anything else?

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1 MR. BRODSKY: Nothing further, your Honor.

2 THE COURT: Thank you.

3 Yes, sir.

4 MR. KUBY: Yes, Judge. Just a couple of quick things.

5 We did file these subpoenas a number of days ago;

6 obviously could have been done sooner. But Mr. Brodsky, you
7 know, has been on notice of the existence of these -- he hasn't
8 been on notice of the existence of your ruling, it came down
9 last night, but some of this could not legitimately have come
10 as a surprise to him.

11 Nonetheless, out of professional courtesy, when
12 Ms. Champion finishes her direct examination, we will review
13 documents that are produced by that time. I have no time frame
14 for Mr. Brodsky's production, and I don't know that he does
15 either, but just so we can move things along, I'd like to know
16 the projection.

17 MR. BRODSKY: Your Honor, we are aiming to produce
18 them, per the Court's order, at the time Ms. Champion takes the
19 witness stand. So we are preparing them this morning, and we
20 have the log ready of the meetings with the special
21 prosecutors, and we are preparing the production which we
22 identified over the weekend, the responsive 300, plus or minus,
23 email communications. We will produce that at the time
24 Ms. Champion testifies, per the Court order, on direct
25 examination.

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1 THE COURT: All right. Thank you.

2 MR. KUBY: Last Judge, Mr. Brodsky said the \$800
3 million is a "total fiction."

4 THE COURT: I don't care.

5 MR. KUBY: I do. Would he provide the real number?

6 THE COURT: Counsel, we've just been there and done
7 that.

8 MR. KUBY: No, no, no --

9 THE COURT: He's going to provide the real number to
10 the Court under seal.

11 Anything else?

12 MR. BRODSKY: No, your Honor.

13 You asked for the real number. Was it by quarter or
14 just biannually?

15 THE COURT: Biannual. And I think the time period --
16 Mr. Kuby, correct me if I'm wrong. I think the time period is
17 maybe 18 months or something, is that right, the relevant time
18 period on the subpoena?

19 MR. BRODSKY: About 24 months, your Honor.

20 THE COURT: 24 months. Okay.

21 So whatever years are involved, year one, year two,
22 year three.

23 MR. BRODSKY: Thank you, your Honor.

24 THE COURT: Thank you.

25 All right, counsel. How long does the prosecution

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1 project that its direct case will be?

2 MS. GLAVIN: Your Honor, again, subject to
3 cross-examination, I think we'll finish in three days, perhaps
4 rest on Thursday morning. That is aspirational.

5 THE COURT: Does anything about that strike you as
6 unreal, Mr. Kuby? And only you know what you're going to cross
7 on, so --

8 MR. KUBY: I think close of -- I think Thursday-ish is
9 completely reasonable, might be a little earlier, might be a
10 little later. We will be asking -- I mean, at the close of the
11 prosecution's case obviously we need to make some very basic
12 fundamental decisions about going forward with a defense. And
13 so if we finish in a timely work human-like fashion, I would
14 probably ask for the weekend to make those decisions and come
15 back on Monday.

16 I've actually spoken to the private prosecutor about
17 it, and she preliminarily expressed no objections, subject to
18 how things roll out.

19 THE COURT: All right.

20 If you were to go full bore on a defense case, how
21 long do you anticipate that to take?

22 MR. KUBY: Subject to cross-examination?

23 THE COURT: Yes, sir.

24 MR. KUBY: I think two days would be the maximum I
25 could imagine; although, in fairness -- and I don't mean this

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1 in a snarky way --

2 THE COURT: I'm smiling.

3 MR. KUBY: -- there are many, many things that have
4 happened in this case that I could not have imagined. But my
5 best estimate is two days.

6 THE COURT: All right.

7 I suspect you're not alone in that, sir.

8 All right. Counsel, do you want to take a break to go
9 to the rest room and then start with openings?

10 MR. KUBY: Well, we do have a variety of preliminary
11 matters to address with the Court. I would love to take a
12 bathroom break before addressing those.

13 THE COURT: Give me a hint.

14 MR. KUBY: It's bigger than a bread box.

15 THE COURT: Come on, come on, come on. Topics.

16 MR. KUBY: We want to talk about, for example,
17 Mr. Donziger playing a direct role in his own trial, other
18 than --

19 THE COURT: What does that mean?

20 MR. KUBY: At this point -- and I have alerted the
21 private prosecutor to this.

22 THE COURT: Just go down the topics. Let me hear the
23 topics, Mr. Kuby.

24 MR. KUBY: Okay. Topics.

25 Maybe access, maybe not. I don't have any clear sense

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1 of what access is like, because I've been sitting here.

2 I have an issue with Rule 14.

3 I want a document documented.

4 Mr. Donziger wants to address the Court.

5 I have a renewed request for a jury trial, which will
6 be brief.

7 And I have a request for some relief with respect to
8 communications between and among the private prosecutor and
9 Judge Kaplan. And I really feel, having read all the papers on
10 this and have written some of them and having read the Court's
11 opinions, I really think we have been talking past each other,
12 that's my impression, so I'd like to just take a few minutes.

13 THE COURT: All right. So that's the topic.

14 Anymore topics?

15 MR. KUBY: No.

16 THE COURT: All right.

17 Five minutes. Thank you, counsel.

18 MR. KUBY: Thank you, Judge.

19 (Recess)

20 THE COURT: Mr. Kuby, most of the items on your list,
21 except for, I think, the first one, are items that are dealt
22 with once, twice, or three times.

23 As to the first item, which is Mr. Donziger is playing
24 a part, I received literally 30 seconds ago your memorandum on
25 that. I haven't had a chance to read it. So I will reserve on

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1 that until I have an opportunity to read your memo.

2 With respect to the other items, we can go down them,
3 and I will ask you if you have something to say in addition to
4 what has been said before. And we'll consider it an untimely
5 motion for reconsideration.

6 So the first thing you had on your list was access.
7 Is there anything to be said that you haven't said before, sir?

8 MR. KUBY: I actually have one half of an item. While
9 you were out during our break --

10 THE COURT: Yes, sir.

11 MR. KUBY: -- Mr. Brodsky, of the very burdensome, has
12 delivered four Red Wells of material for which I thank you very
13 much. It's a stunning example of what can be done. We have
14 not yet had a chance to look at them, but we'll try to
15 straighten all that out. I just wanted to let the Court
16 know --

17 THE COURT: Wonderful.

18 MR. KUBY: Pardon me?

19 THE COURT: Wonderful. Wonderful.

20 MR. KUBY: Wonderful.

21 I'm sorry. One thing that I just want to alert the
22 Court to in advance is I wear hearing aids in both ears, have
23 for many, many years. And sometimes when I'm talking and my
24 own voice is booming in my head, it takes me a second to
25 realize you're talking and I need to shut up. So if you

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1 will --

2 THE COURT: Thank God.

3 MR. KUBY: Right. No, I know, right, Judge?

4 I just wanted to let you know it's not a matter of not
5 listening, it's sometimes legitimately a matter of not hearing.

6 THE COURT: Yes, sir.

7 MR. KUBY: The access question --

8 THE COURT: Is there something that you want to say
9 that you haven't said before?

10 MR. KUBY: Yes.

11 THE COURT: What's that?

12 MR. KUBY: I'm mindful of your admonition, and I'm
13 also mindful of the time you're giving me.

14 So what I would like to say is it appears that there
15 are some empty seats in the press gallery that are not occupied
16 by press. Would it be possible to get a couple of people from
17 the overthrow room -- the overflow room in here, subject to
18 their being evicted if the pressure is up?

19 THE COURT: I think we, as a matter of policy in this
20 court, give the press preferential access. And it has
21 traditionally, in bench trials or other nonjury events, meant
22 that the press gets the jury box.

23 So let's see how it goes. If it continues to be not
24 full, I'll reconsider that.

25 MR. KUBY: Okay. Thank you, Judge.

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1 THE COURT: All right.

2 Rule 14, sir.

3 MR. KUBY: Okay. As Mark Twain famously said, If I
4 had more time, I would have written a shorter letter, so I'm
5 going to try to keep this short.

6 In Rule 14, as the Court knows, the rules of doing
7 business in the Southern District of New York, vests none of us
8 with any substantive rights. I understand all that; you've
9 ruled on that. It does provide that any judge, upon written
10 advice to the assignment committee, may transfer directly --

11 THE COURT: Sir, do you have something to say you
12 haven't said before?

13 MR. KUBY: Yes.

14 THE COURT: All right.

15 MR. KUBY: Well, I have something to say that you
16 haven't ruled on before.

17 So Judge Kaplan, you know, said in one of his rulings
18 that's exactly what transpired here. What I'm asking for, and
19 I've asked Judge Kaplan this, I've asked you this, and if you
20 ruled on it, then I didn't see it. All I want is a copy of the
21 mandatory written advice that Judge Kaplan had to submit upon
22 transferring the case to you on the public docket. Judge
23 Kaplan would not address me on this when I filed -- addressed
24 to him in this case, telling me that I had to file an
25 appearance in the underlying civil case, which I would rather

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1 set my hair on fire than do that.

2 THE COURT: Bet you there's a lot of people who join
3 you in that.

4 MR. KUBY: About 50 of them who are no longer with us.

5 And I'm not suggesting that these rules confer some
6 sort of substantive right on a litigant, but this is simply a
7 ministerial document under the presumption that documents in
8 the federal courts are public unless they are sealed or --

9 THE COURT: Unless they are internal court documents.

10 The rule clearly says that it endows plaintiffs, litigants, all
11 litigants, with no rights. You don't have a right to the
12 document. Denied.

13 MR. KUBY: Okay. There is a general rule that
14 documents in the court are -- there's a general rule of
15 openness for a ministerial --

16 THE COURT: I know that.

17 What are you telling me you haven't told me before?

18 MR. KUBY: Okay. Have you actually seen it?

19 THE COURT: What?

20 MR. KUBY: The advice that Judge Kaplan undoubtedly
21 filed because he is very punctilious --

22 THE COURT: Counsel, I'm not here to be questioned.

23 MR. KUBY: I'm just --

24 THE COURT: Anything else on Rule 14, sir?

25 MR. KUBY: Just asking. Just asking, Judge.

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1 No, I think that's it.

2 THE COURT: Okay.

3 And on Mr. Donziger's addressing the Court, we'll
4 worry about that after I read your memo.

5 Jury trial. Do you have anything to say you haven't
6 said before, sir?

7 MR. KUBY: The only thing I have to say is this is the
8 last opportunity before the Court begins this process to have
9 this tried before a jury.

10 THE COURT: So would that be a no? No, I don't have
11 anything else to say?

12 MR. KUBY: After what I just said, the answer is no.

13 THE COURT: Thank you.

14 I adhere to my prior rulings.

15 Communications between the prosecutors and Judge
16 Kaplan, anything else to say that hasn't been said in the two
17 or three times I've dealt with this?

18 MR. KUBY: I think so, Judge.

19 THE COURT: Yes, sir.

20 MR. KUBY: Okay.

21 And in the end, there's a request for relief.

22 THE COURT: In the end of what?

23 MR. KUBY: In the end of my very short and
24 increasingly shorter presentation on this issue.

25 THE COURT: Okay. But really, is there something that

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1 you want to say that you haven't yet said?

2 MR. KUBY: Yes.

3 THE COURT: Yes, sir.

4 MR. KUBY: But I need to provide a tiny bit of
5 background.

6 We all recognize -- and we're not arguing this --
7 Judge Kaplan brought the charges; he appointed the private
8 prosecutor to prosecute; designated this Court to try; and
9 we've raised those objections, we are not rearguing those.

10 And if that were the only role that Judge Kaplan was
11 playing in this case, we would not have the issue that I'm
12 going to address. That is to say that if that were the
13 configuration, the private prosecutor could well question Judge
14 Kaplan as a witness in the case, not as a testimonial sense,
15 but in the sense of somebody who actually knows this case as
16 well or better than anybody else. He basically could occupy --

17 THE COURT: Counsel, let's get to it.

18 MR. KUBY: I am.

19 There would be a wide range of *ex parte* activities
20 that he could engage in with the private prosecutor without any
21 problem whatsoever.

22 The problem comes in after he declared that he is an
23 unrecused judge in this case; not in the underlying litigation,
24 in this criminal case. And as an unrecused judge who is
25 playing whatever role the two of you decide he's going to be

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1 playing in this case, he is not permitted to have any *ex parte*
2 communications with the private prosecutor, except for very,
3 very narrow matters like search warrants, grand juries, and the
4 like.

5 So I know the prosecution says and this Court has
6 said, Judge Kaplan is not advising on strategy or decisions;
7 he's not deciding things. And we are not disputing that,
8 although I think those terms are subjective. The issue is not
9 what Judge Kaplan is not saying to the private prosecutor, the
10 issue is, as an unrecused judge in this case, he should be not
11 saying anything at all.

12 If he kept this case, let's say he exercised his right
13 to actually keep it, which he has a right to do, there would be
14 no question. He couldn't be dealing directly with the private
15 prosecutor after appointment; those would be improper *ex parte*
16 context.

17 So the relief I'm requesting -- and I know the Court's
18 mind on this, so I'm not going to belabor it, but I am
19 requesting two things: I'm requesting, number one, that this
20 Court direct the private prosecutor to assemble and compile --
21 not today -- all communications, electronic and otherwise, that
22 they have had concerning this --

23 THE COURT: Okay. This is the same request that
24 you've made before; is it not?

25 MR. KUBY: No.

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1 THE COURT: How is it different please, sir?

2 MR. KUBY: To assemble them all, file them with the
3 Court, the Court will then place them under seal. And after
4 Mr. Donziger is convicted and after he files his notice of
5 appeal, those documents will go to the Second Circuit, so the
6 Second Circuit at least can see the record that exists that we
7 were not privy to. I'm past asking you to give those to us;
8 you've said no three times.

9 (Continued on next page)

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1 THE COURT: I got it. Thank you.

2 MR. KUBY: And second, I want all the communications
3 that you have had with Judge Kaplan concerning this case to be
4 summarily placed under seal, not given to the litigants but
5 sent under seal to the United States Court of Appeals for the
6 Second Circuit after Mr. Donziger is convicted and files his
7 notice of appeal.

8 THE COURT: Thank you.

9 MR. KUBY: Thank you.

10 THE COURT: Ms. Glavin.

11 MS. GLAVIN: Your Honor, there's a fundamental issue
12 with Mr --

13 THE COURT: Either one of you if you want, to stand at
14 the booth when you speak. Obviously, that's fine.

15 MR. KUBY: Can I get not within six feet of Ms. Glavin
16 so I can hear her better?

17 MS. GLAVIN: Could it be eight?

18 MR. KUBY: Yeah.

19 MS. GLAVIN: So, your Honor, one of the fundamental
20 issues or misunderstandings that the defense has been raising
21 about Judge Kaplan not being recused from this case, I am not
22 aware of any other judge in this court house that has been
23 recused from the case. The issue is who's presiding over this
24 case. Your Honor is presiding over the case, not Judge Kaplan.
25 And so in this particular criminal case there have not been

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1 improper ex parte communications between the prosecutors. And
2 the Court and with respect to the prosecutors' communications
3 with Judge Kaplan to the extent they're interested in the
4 discussions I had with Judge Kaplan with respect to being
5 appointed to this case and any questions that I may have had
6 with him about the case, there is just simply not entitled to
7 that. I have said repeatedly, Judge Kaplan is not making the
8 decisions for me. He is not sitting around strategizing with
9 me. I can represent on the record, your Honor, that I haven't
10 had a communication with Judge Kaplan about this case since, I
11 think it's 2019. And so there is no, he is not part of our
12 prosecution case. I don't get on the phone and consult with
13 him about what I am doing, what I want to do or thinking about
14 doing and he is not doing the same. You know there were
15 discussions leading up to my appointment and I think there were
16 some small discussions after that but these are not discussions
17 about how I go about doing my job and I think that I have
18 said enough on that point. He is not presiding over this case.

19 THE COURT: OK. Mr. Kuby.

20 MR. KUBY: Briefly, judge, again, what I continually
21 hear is what Judge Kaplan is not doing. And it just reminds me
22 of my own clients in blue collar cases or no collar cases where
23 the defendant says, I didn't shoot the guy with the silver gun
24 on Fifth Avenue while I was wearing a hat at eight o'clock at
25 night, so I'm not guilty. Got it. But that's not how this

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1 works.

2 Judge Kaplan is someone who submitted in an opposition
3 through writ of mandamus his statement that he is not recused
4 from this case makes him at least in some internal way a judge
5 who may or may not be doing something on this case but
6 certainly a judge who believes that he is capable of exercising
7 Article III powers on this case when and if and whenever he
8 chooses to do.

9 So, if that's Judge Kaplan's position and that's the
10 position he is taking publicly, then any communications that
11 the private prosecutor has had with Judge Kaplan, at least post
12 appointment, unless they relate simply to the areas where
13 you're permitted, you know, to have ex parte communications.
14 Say, here, Judge Preska, I have an asthma attack. I have to
15 use my albuterol or something like that, not true. Outside of
16 those, they're all improper. Period. They shouldn't be taking
17 place. They shouldn't be had.

18 And I think that the Second Circuit which could be the
19 final arbiter of this, should at least have not the same as
20 Judge Kaplan is not doing, but the things that Judge Kaplan is
21 having, has had before them. And look, if it's nothing the
22 circuit will have no problem saying this is a nonissue. I just
23 think the circuit should have that in the record.

24 THE COURT: Thank you.

25 Anything else? I adhere to my prior rulings on this

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1 issue.

2 Did you have anything else on your list, Mr. Kuby. I
3 think we've exhausted it.

4 MR. KUBY: Give me one second.

5 (Pause)

6 THE COURT: Mr. Garbus, you look like you're ready.
7 What motion do you want to make now.

8 MR. GARBUS: We learned something on Friday which I
9 think changes the entire argument in this case and I have
10 motion papers that we've prepared.

11 THE COURT: I can't hear you. Speak into the mic,
12 please, sir.

13 MR. GARBUS: We have prepared brief motion papers now
14 which we will serve if we can with the Court and --

15 THE COURT: What's the motion, sir?

16 MR. GARBUS: We have learned through a letter from the
17 Department of Justice on Friday that it's declining, Department
18 of Justice was declining to exercise any supervision over the
19 prosecutor in this case. This lack of supervision means that
20 the prosecutor is free floating --

21 THE COURT: Mr. Garbus, this is not something we have
22 to do before trial. So, I will accept your papers when you're
23 ready. Would you confer with the other side, get together a
24 briefing schedule and I'm happy to do it when the briefs are
25 in.

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1 MR. GARBUS: May I suggest that we have heard the
2 argument with respect to Rule 42 this new letter from the
3 Department of Justice which we first got Friday --

4 THE COURT: Counsel, I've just told you I'm not going
5 to rule without briefing. I don't even have your brief yet,
6 much less the opposition. So, we're not going to do that now.

7 MR. GARBUS: I am now going to hand up if I can --

8 THE COURT: All right. But we're not doing it now.
9 It's time for openings now.

10 Mr. Garbus, if you are going to walk around you've got
11 to have a mask on. We're very serious around here. All right.

12 MR. KUBY: Judge, I'm sorry. We are getting there.

13 Mr. Donziger wishes to bring something to the Court's
14 attention regarding access which I have no personal knowledge
15 of because I have been sitting here with all of you. If he
16 could just address the Court on that narrow issue.

17 THE COURT: So, he is a fact witness now; is that what
18 it is?

19 MR. KUBY: No. No. He is not going to be under oath,
20 judge.

21 THE COURT: Come on, folks. If you want to get this
22 case tried we've got to get going.

23 What's the problem?

24 THE DEFENDANT: Your Honor, may I address the Court?

25 THE COURT: Certainly, if you are at a microphone.

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1 THE DEFENDANT: There are people trying to get into
2 court to attend this trial, who can't get in because they're
3 being told the overflow rooms are full. So, I am asking you --
4 I know there's a lot of empty courtrooms here. I don't know if
5 it's possible from a technical standpoint to open up additional
6 spaces.

7 THE COURT: It is being done as we stand here. There
8 are several overflows. The staff is working as quickly as they
9 can to open overflows.

10 THE DEFENDANT: Can you please instruct them to tell
11 the people waiting that they are trying to do that because the
12 text I got --

13 THE COURT: Why don't you just text them back and tell
14 them.

15 THE DEFENDANT: One other thing about accessing which
16 has not been raised yet, if I may, this will take about a
17 minute. I have clients in Ecuador who want to watch this
18 trial. You have terminated Zoom access where they can't even
19 listen to it, whereas in all the pretrial proceedings there was
20 Zoom access.

21 THE COURT: Yes, sir, that is correct. In my prior
22 order I have distinguished the rules for pretrial matters and
23 trial matters. I am not permitted to broadcast a trial. I
24 adhere to my prior rulings on that.

25 THE DEFENDANT: If I could just say this.

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1 Ambassador -- write you a letter. I don't know him by the way.

2 THE COURT: Mr. Donziger, the rules are the rules. I
3 adhere to my prior findings.

4 THE DEFENDANT: The reality is you do have the
5 discretion to open up zoom access and I would ask you to please
6 reconsider.

7 THE COURT: OK. I've reconsidered and denied it.

8 MR. KUBY: Thank you, judge.

9 THE COURT: Mr. Garbus, would you like do your opening
10 now? And I would remind you that I've allocated 45 minutes for
11 each side.

12 MR. KUBY: You know, judge, it's been a while for me
13 and I'm old.

14 THE COURT: You are not as old as I am, Mr. Kuby.
15 Don't give me that old stuff.

16 MR. KUBY: I wasn't going to say that, judge.

17 THE COURT: Mr. Garbus, I have just demonstrated that
18 I am older than Mr. Kuby by asking you to go first, while that
19 was clearly a mistake.

20 MR. KUBY: -- not having a stroke, judge.

21 THE COURT: We old people have to stick together.

22 Mr. Garbus, I made a mistake by asking you because you
23 were standing you looked like you were ready to roll.

24 MR. GARBUS: I was. But I would like and I know you
25 have ruled --

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1 THE COURT: To the microphone, please, sir. You are
2 well welcome to sit.

3 MR. GARBUS: You have said that the recent information
4 that we got from the government on Friday is something that you
5 would want to see and rule on.

6 THE COURT: Counsel, I have ruled that I am not going
7 to rule now and we are not going do discuss this now until I
8 have had a chance to read your briefing, the opposition and any
9 reply you might put in. So, now it is time for opening
10 statements, sir.

11 Ms. Glavin.

12 MR. GARBUS: Judge Preska, may I make one more
13 statement?

14 THE COURT: Yes, sir.

15 MR. GARBUS: One sentence.

16 THE COURT: Let's go.

17 MR. GARBUS: The information that we got on Friday
18 invalidates this entire proceeding. So, to go through
19 something which we now know must be set aside, entire process,
20 seems to me foolish.

21 THE COURT: OK. Well, the Court of Appeals, either
22 I'll decide that once I read your briefing or the Court of
23 Appeal will tell me. We're not doing it --

24 MR. GARBUS: I --

25 THE COURT: Mr. Garbus, I am warning you, it is time

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Opening Statement - Glavin

1 to sit down so we can have opening statements.

2 Ms. Glavin, I remind you too that opening statements
3 are limited to 45 minutes.

4 MS. GLAVIN: Yes, your Honor.

5 THE COURT: Ms. Glavin.

6 MS. GLAVIN: Thank you.

7 Your Honor, Steven Donziger, the defendant in this
8 case, has intentionally and repeatedly disobeyed court order
9 after court order after court order, all of which were in full
10 force and effect. And he did this for years, disobeying court
11 orders that direct you to do something or to not do something
12 is a crime and it's called criminal contempt and that is what
13 Mr. Donziger is charged with.

14 Now, to convict the defendant of criminal contempt we
15 the special prosecutors have to prove three things.

16 One is that there was the issuance of the court order.

17 Secondly, that the defendant, Mr. Donziger, disobeyed
18 that order.

19 And third, that the defendant did it willfully and
20 knowingly that he had the intent to consciously disregard the
21 court order.

22 Now, the evidence will show that Steven Donziger has
23 been committing the crime of criminal contempt since 2014.
24 That is why we are here and that is what this case is about.
25 Here is the background. The evidence will show that in 2011

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Opening Statement - Glavin

1 the Chevron Corporation sued Steven Donziger, a New York City
2 lawyer. They sued him in this district court, the Southern
3 District of New York. And in that lawsuit Chevron claimed that
4 Steven Donziger and others that he worked with engaged in fraud
5 and they engaged in corruption to obtain a nine-billion-dollar
6 judgment against Chevron in another country, in Ecuador.
7 Mr. Donziger in that case in Ecuador was an attorney for the
8 plaintiffs. That case was where that nine-million judgment was
9 entered. And Mr. Donziger had an agreement with his client
10 about how he was going to get aid for that Ecuadorian case. If
11 they won their lawsuit in Ecuador, Steven Donziger would
12 receive 6.3 percent of that multibillion dollar judgment. In
13 other words, Steven Donziger stood to make approximately \$550
14 million from the Ecuadorian judgment.

15 So, when Chevron sued Mr. Donziger here in New York
16 after a lengthy trial on Chevron's allegations against Steven
17 Donziger about his conduct in that Ecuadorian case on March 4th
18 of 2014, Judge Lewis Kaplan of the Southern District of New
19 York ruled in Chevron's favor.

20 Judge Kaplan issued a decision and a judgment that was
21 specifically designed to prevent Steven Donziger from ever
22 profiting from that Ecuadorian judgment because of the
23 fraudulent and corrupt acts that he had engaged in during that
24 case --

25 Now, the judgment in Chevron's favor that Judge Kaplan

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Opening Statement - Glavin

1 issued is called a RICO judgment and that's what we will be
2 calling it during the course of this trial, your Honor. Here
3 is what it did.

4 Number one, it established a constructive trust for
5 the benefit of Chevron on all property that Steven Donziger,
6 personal or real, tangible or intangible, that Steven Donziger
7 received or may receive in the future that was traceable to
8 that multibillion dollar judgment. And that RICO judgment
9 specifically mentioned that the property subject to that
10 constructive trust included but what was not limited to all
11 rights to that 6.3 percent contingent fee interest that
12 Mr. Donziger had. And the RICO judgment directed, it ordered
13 Steven Donziger to "transfer and forthwith assign to Chevron
14 all such property that he now has or here and after may obtain.

15 The RICO judgment also directed Steven Donziger to
16 execute in favor of Chevron stock power. Transferring to
17 Chevron all of his right, his title and his interest and his
18 shares of a gibraltar company known as Amazonia. And you will
19 learn during the course of this trial that Amazonia was the
20 gibraltar entity that was created to pay out the proceeds from
21 the Ecuador judgment. And that Steven Donziger had sharers in
22 Amazonia representing the amount of his 6.3 percent contingency
23 fee interest. That RICO judgment also prohibited Steven
24 Donziger from engaging in or undertaking any acts to monetize
25 or profit from that Ecuadorian judgment including by selling,

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Opening Statement - Glavin

1 assigning, transferring any interest in that judgment such as
2 his own, like his shares in Amazonia and his 6.3 percent
3 contingency fee interest for which he stood to get about \$550
4 million.

5 Mr. Donziger appealed that judgment. The Second
6 Circuit Court of Appeals confirmed it in its entirety and the
7 Supreme Court denied -- The evidence will show that after
8 Mr. Donziger's appeals were exhausted in 2018, four years later
9 after the original RICO judgment was issued, Judge Kaplan
10 issued a second judgment. He issued a second judgment against
11 Steven Donziger, a monetary judgment for costs in the amount of
12 \$813,000. And that meant that Chevron had the right to obtain
13 discovery from Mr. Donziger to enforce the judgment by learning
14 about his assets, sources of income over the years and to go
15 after those assets to satisfy the judgment.

16 So, when did Steven Donziger's disobedience of the
17 court orders begin? The evidence will show that he began
18 violating that RICO judgment as soon as it was issued on March
19 4th of 2014 by Judge Kaplan. He made the decision not to
20 comply with the judgment right from the beginning.

21 The evidence will show that first, Steven Donziger did
22 not execute a stock power assigning his interest in those
23 Amazonia shares to Chevron as he was directed to do so on March
24 4, 2014. And what you will also learn during the course of the
25 trial is that Mr. Donziger was so concerned about having to sign

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Opening Statement - Glavin

1 over those Amazonia shares to Chevron that he specifically
2 asked Judge Kaplan, please, stay that portion of the RICO
3 judgment until at least my appeal is decided. Because you see
4 those shares represented his contingency fee interest. It was
5 the vehicle through which he could get the hundreds of millions
6 of dollars from the Ecuadorian judgment. He didn't want to
7 turn them over. So, when he asked Judge Kaplan to stay that
8 order the evidence will show that Judge Kaplan met him halfway.

9 On April 25th of 2014, a month after the RICO judgment
10 was entered, Judge Kaplan temporarily modified the judgment.
11 He said, Mr. Donziger, you don't have to turnover your shares
12 of Chevron. You don't have to turnover your shares of Amazonia
13 to Chevron. Here's what we'll do. I'm going to order you to
14 execute a stock power in favor of the clerk of this court for
15 those shares while your appeal is pending because I don't want
16 those sharers in your control because if they remain in your
17 hands -- and Judge Kaplan said this to Mr. Donziger -- you
18 might benefit from your fraud by selling those shares or hiding
19 the proceeds.

20 Well, Steven Donziger did not execute the stock power
21 in favor of the clerk's office. He didn't do it in 2014. He
22 didn't do it in 2015. He didn't do it in 2016. And he didn't
23 do it in 2017 while the appeal was pending and when the Supreme
24 Court deny review. And we will call a representative from the
25 clerk of court's office who will tell you when Steven Donziger

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Opening Statement - Glavin

1 finally exhausted his appeals in 2017. He then did not assign
2 the stock power for those shares to Chevron as he was initially
3 directed to do back in 2014. And the evidence will show that
4 Mr. Donziger openly admitted that he didn't do it. And we will
5 show during the course of this trial Mr. Donziger's public
6 statements on the record admitting this. It was only after
7 Chevron moved in 2018 to hold Mr. Donziger in contempt for
8 violating that provision of the RICO judgment four years later
9 that Mr. Donziger executed that stock power.

10 The second way he violated the RICO judgment is that
11 he did not, as he was directed to do, transfer to Chevron his
12 interests in the 6.3 percent contingency fee granted to him by
13 his clients. You see Mr. Donziger, the evidence will show, had
14 a 2011 retainer with the plaintiffs in that Ecuadorian lawsuit
15 and with an organization called the Amazonia Defense Fund. The
16 Amazonia Defense Fund was the beneficiary of that Ecuador
17 judgment. The 2011 retainer agreement granted to Steven
18 Donziger and associates the 6.3 percent contingency fee. And
19 just like the Amazonia shares, he did not assign them to
20 Chevron as he was ordered to do on March 4th of 2014. He
21 didn't do it in 2014. He didn't do it in 2015. He didn't do
22 it in 2016 or 2017. And again, only after Chevron moved to
23 compel Mr. Donziger -- that contingency fee granted by his 2011
24 retainer did it do it, 2018, four and a half years later.

25 Now, third, your Honor, the evidence will show that

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Opening Statement - Glavin

1 not only did Mr. Donziger not surrender his 6.3 percent
2 contingency fee interest that he had from his 2011 retainer
3 with Chevron, the evidence will show that in 2017, three years
4 after the RICO judgment was issued, Mr. Donziger quietly
5 entered into another contingent fee agreement. He did it in
6 2017. And that new contingent fee agreement was not between
7 Mr. Donziger's law office and the plaintiff's in the FDF. This
8 new 2017 agreement was between the ADF, the Amazon Defense Fund
9 and Mr. Donziger in this individual personal capacity.

10 And the ADF was the beneficiary of the judgment. So,
11 Mr. Donziger didn't assign this new interest that he certainly
12 wasn't going to tell the court about. And the existence of
13 that agreement only came out during a June 25, 2018 deposition.
14 And after that came to light in the deposition, Mr. Donziger
15 refused to assign that contingency fee interest over to Chevron
16 as he was directed to do. And it was only in 2019 after
17 Chevron moved to hold him in contempt for not assigning that
18 new 2017 interest and after Mr. Donziger was found in contempt
19 did he assign it.

20 Now, how else did he violate the RICO judgment? Well,
21 the evidence at trial will show that in December of 2016
22 Mr. Donziger assigned a portion of a 6.3 percent contingency
23 fee, his personal portion of that fee in the Ecuadorian
24 judgment to a life coach by the name of David Zelman. And he
25 signed that portion in exchange for Mr. Zelman providing him

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1 with approximately \$11,000 of personal services. And oh, yeah,
2 Mr. Donziger pledged it out of the 6.3 percent contingency fee
3 interest that he was supposed to have assigned to Chevron back
4 in 2014. Mr. Zelman will be a witness at this trial and he
5 will testify about his agreement with Mr. Donziger which was
6 memorialized in an e-mail between the two of them.

7 Now, the evidence will be that Mr. Donziger's
8 deliberate disobedience of the RICO judgment in the four ways
9 that I've described and the evidence will show, they weren't
10 the only court orders he disobeyed. It wasn't the only
11 criminal contempt he committed. You see there were a separate
12 series of order. In 2018 and in 2019 he violated a series of
13 court orders in connection with the ongoing civil litigation
14 that was pending before Judge Kaplan with Chevron.

15 MR. KUBY: Judge, I hate do this. I really do. But
16 if the prosecution could try to confine itself to the charges
17 that the Court is trying. One of which by the way, is not
18 Amazonia. That would be just helpful. I think or not.

19 THE COURT: Thank you, counsel. I will bear it in
20 mind.

21 MR. KUBY: Thank you.

22 MS. GLAVIN: After the RICO judgment was affirmed in
23 2017 and the \$813,000 money judgment was issued against
24 Mr. Donziger in February of 2018, there was a second phase of
25 the civil proceedings and that second face was post judgment

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1 discovery.

2 During those proceedings Judge Kaplan issued specific
3 orders directing that Chevron was entitled to discovery from
4 Mr. Donziger on two issues. First, discovery in aid of
5 enforcing that money judgment against him which meant that
6 Chevron could get documents and information from Mr. Donziger
7 to identify his assets sources of income and what he had been
8 doing financially for the past number of years so that they
9 could satisfy and collect on an \$813,000 judgment against him.

10 And secondly, Judge Kaplan ordered discovery about
11 Mr. Donziger's compliance with the RICO judgment because
12 Chevron had collected evidence that Mr. Donziger was disobeying
13 that RICO judgment. And the evidence at trial will be and we
14 will show that he was.

15 So, in the post judgment discovery Judge Kaplan
16 specifically ordered Steven Donziger to produce records on both
17 of those issues. We will enter those orders into evidence at
18 trial and the evidence will be that Mr. Donziger denied those
19 orders. Mr. Donziger deliberately withheld hundreds of pages
20 of documents. He withheld them on First Amendment grounds and
21 he also withheld them on privilege grounds.

22 And on the First Amendment issue Judge Kaplan
23 specifically ruled that there was no legal basis for
24 Mr. Donziger to be withholding documents on First Amendment
25 grounds and yet despite that ruling Mr. Donziger still refused

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Opening Statement - Glavin

1 to produce them.

2 And on the privilege issue the evidence will be that
3 Mr. Donziger was required by law by rule of this court that
4 when you produce documents in response to a subpoena at the
5 same time you have to produce a privilege log if you are
6 withholding documents and you are claiming privilege.

7 Mr. Donziger didn't do that, and he had a long time to do that
8 the evidence will show. He didn't do that despite knowing he
9 had to and claiming he would at times. The failure to produce
10 that privilege log resulted in Judge Kaplan filing a privilege
11 waiver and directing him to produce his records without regard
12 to privilege.

13 And the evidence will show as no surprise,
14 Mr. Donziger in this case because it had happened before this
15 litigation the evidence will show that years earlier
16 Mr. Donziger similarly did not produce privilege logs and Judge
17 Kaplan similarly found a waiver.

18 So despite Judge Kaplan's unequivocal rulings
19 directing Mr. Donziger to produce documents Mr. Donziger
20 persisted in his refusal to comply with the court order and he
21 did it for months. And during that period, the Court orders
22 directing Mr. Donziger to produce records were still in full
23 force and effect. They hadn't been stayed. They hadn't been
24 modified and Mr. Donziger did not make any effort to go to the
25 Second Circuit to seek a stay of those orders. He knew he

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Opening Statement - Glavin

1 could have done it because the evidence will show he'd done it
2 before in this litigation. The evidence will be that
3 Mr. Donziger did not seek relief in the Second Circuit from his
4 required compliance with those live orders.

5 Now, because of this continuing and continuing refusal
6 to produce the records, on March 5th of 2019, Judge Kaplan
7 appointed a neutral forensic expert to image and examine
8 Mr. Donziger's devices to preserve relevant records and then to
9 examine those devices or records responsive to the discovery
10 requests that had been outstanding that he had been directed to
11 produce for many months.

12 The same day that Judge Kaplan appointed that neutral
13 forensic expert, he issued an order directing Mr. Donziger to
14 do two things. First was to provide that expert with a sworn
15 list. So, on March 59 he directed Steven Donziger to provide a
16 sworn list in three days, by March 8th of 2019, listing all of
17 his electronic documents and all of the accounts that he had
18 used.

19 THE COURT: I think you meant "devices".

20 MS. GLAVIN: I'm sorry. "Electronic devices", as well
21 as any accounts that he had been using for storing information
22 for messaging.

23 The second thing he specifically directed Mr. Donziger
24 to do was that he was to provide to the neutral forensic expert
25 on March 18, 2019, at noon in his apartment building, he was to

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1 produce all of his devices to the neutral expert for imaging.

2 Mr. Donziger, he didn't do either. In fact, the
3 evidence will show that he e-mailed that neutral forensic
4 expert and said, quote, I hope you have not cleared your
5 schedule to work on this matter, end quote. Mr. Donziger in his
6 email correspondence and letters made clear that he intended
7 to disobey their orders and that he was willing to be held in
8 contempt.

9 And what is also notable and will be shown through the
10 evidence at this trial is that Mr. Donziger did not seek any
11 relief from compliance for those live orders with the Second
12 Circuit. There were avenues available to him that he knew
13 about such that he could go and appeal for emergency relief
14 from the live orders which is a stay order mandamus. He didn't
15 do it. He chose to violate the orders.

16 On May 23rd of 2019, Judge Kaplan found Mr. Donziger
17 in civil contempt and Judge Kaplan then imposed coercive fines
18 starting at two thousand dollars a day to induce Mr. Donziger
19 to comply with the live orders that were in full force and
20 effect.

21 On June 11th of 2019 because Mr. Donziger still
22 refused to surrender his devices to the expert for imaging
23 despite the coercive fines piling up, Judge Kaplan directed
24 Mr. Donziger to surrender all of his passports to the clerk of
25 this court the next day by four p.m. Judge Kaplan directed

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Opening Statement - Glavin

1 this is a further coercive measure to try and get Mr. Donziger
2 to comply with the court orders that had not to be stayed or
3 modified and for which Mr. Donziger did not go to the Second
4 Circuit and say, hey, please, get me out of compliance with
5 those orders that are still outstanding.

6 After Judge Kaplan issued the passport surrender
7 order, June 12 came and Mr. Donziger did not surrender his
8 passports to the clerk of the court on that day or any day
9 thereafter and Mr. Donziger made that clear in a letter to the
10 Court which would be part of the evidence in this case.

11 Six weeks later after Mr. Donziger had still refused
12 to surrender his devices, refused to surrender his passports,
13 still had not produced documents that were responsive to
14 discovery orders that Judge Kaplan had issued more than a year
15 earlier. Mr. Donziger was charged with six counts of criminal
16 contempt.

17 Number one, willfully disobeying the March 5, 2019
18 order directing Mr. Donziger to provide a sworn list of his
19 devices and accounts to the neutral forensic expert by March 8.

20 Number two, willfully disobeying the March 5, 2019
21 order directing him to surrender his devices for imaging by
22 noon on March 18th of 2019.

23 Three, willfully disobeying Judge Kaplan's June 11
24 court order directing him to surrender his passports to the
25 clerk of the court the next day by four p.m.

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Opening Statement - Glavin

1 Four, willfully disobeying the 2014 RICO judgments
2 from March 14 through September 3, 2018 by failing to assign
3 his interests in a contingency fee granted by his 2011 retainer
4 agreement.

5 Fifth, disobeying the 2014 RICO judgment from November
6 of 2017 through May 27th of 2019 by failing to assign to
7 Chevron his interests in the contingency fee interests granted
8 by his new 2017 agreement by the ADF.

9 And sixth, disobeying the RICO judgments prohibition
10 against monetizing his interests in the judgment for his
11 activities on December 23rd of 2016 by assigning a portion of
12 his own personal interests the day of -- in exchange or
13 personal services.

14 Now, the evidence in this case is primarily going to
15 be Mr. Donziger's own words. He told Judge Kaplan in court
16 hearings what he would do and what he was not going to do. And
17 in the filings he made quite clear he would not comply with
18 these written court records and issues.

19 The evidence will also be that there is no
20 misunderstanding or mistake by Mr. Donziger. He made a very
21 conscious decision not to comply with court orders that weren't
22 stayed and were in full force and effect.

23 Choices have consequences. And when he made the
24 choice over and over again to disobey he committed a crime.
25 Criminal contempt. Our system depends upon a rule of law of

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Opening Statement - Garbus

1 following the rules, following the court orders that aren't
2 stayed or modified. And the evidence will be that Mr. Donziger
3 decided he didn't want to follow certain court rules or orders
4 because he disagreed with them. He objected to them. He
5 didn't think they were fair. So, he wanted to do things his
6 way. So, he disobeyed the rules and the orders very
7 intentionally over and over. That is criminal contempt.

8 Now, at the end of this trial, your Honor, after
9 hearing all of the evidence and, particularly, Mr. Donziger's
10 own words and actions, the only conclusion supported by that
11 evidence and the law that governs criminal contempt is that
12 Mr. Donziger is guilty of all six counts.

13 THE COURT: Thank you.

14 Mr. Garbus, now it's your turn.

15 MR. KUBY: Could we have five, judge?

16 THE COURT: Certainly.

17 MR. KUBY: Thank you.

18 (Pause)

19 THE COURT: Ladies and gentlemen, won't you be seated.

20 Mr. Garbus.

21 MR. GARBUS: Thank you.

22 Every single fact that the prosecutor has stated, the
23 Chevron prosecutor has stated was known to the U.S. Attorney
24 when he refused to prosecute. He had the entire file, every
25 single document, every single statement when he refused to

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Opening Statement - Garbus

1 prosecute.

2 MS. GLAVIN: Objection as to relevance.

3 THE COURT: Sir, you only have 45 minutes. So, why
4 don't we keep to the relevant matters.

5 MR. GARBUS: Thank you.

6 THE COURT: Yes, sir. Thank you.

7 MR. GARBUS: The prosecutor kept saying what
8 Mr. Donziger said. She never showed you a word he said. She
9 never put up on an instrument a word he said. You never heard
10 one word of his testimony. All you heard was the word of a
11 private prosecutor, the information we got on Friday which will
12 be the subject of the motion --

13 THE COURT: Counsel. Counsel, you asked me for four
14 hours. The prosecutor asked me for an hour. I gave you both
15 45 minutes. If you want to use your 45 minutes on things that
16 are not relevant to the charges in the case, be my guest, but
17 when the 45 minute mark comes I will ask you to sit down. So,
18 don't tell me you don't have enough time.

19 MR. GARBUS: I will sit down after 45 minutes. You
20 and I may have a different understanding at this point as to
21 what's relevant to the charges and relevant to the prosecution.

22 The evidence will show that Judge Kaplan asked the
23 prosecutor to prosecute the case. The U.S. Attorney with 260
24 attorneys in his office and a budget of \$50 million, refused
25 the prosecution. The evidence will show that a Rule 42

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Opening Statement - Garbus

prosecution such as this is rare. The evidence will show you that Judge Kaplan could have then after the prosecutor turned this case down, he could have put it into the wheel and let there be --

MS. GLAVIN: Objection as to relevance. Move to strike.

THE COURT: Mr. Garbus, none of this has any relevance to the charge here. As you know, in order to convict the government must prove the issuance of the order. The defendant's disobedience or disregard of the order and the defendant's knowledge and willfulness in disobeying the order. All of this other stuff is not relevant. It's been the subject of motions and if I was wrong on a motion, the Court of appeals will tell me. Let's focus on the charges at issue, please, sir.

MR. GARBUS: I will now go through the statements in the case, the actual evidence of what Mr. Donziger said, not the characterizations of the evidence.

As we look for it, Mr. Donziger is innocent of every single charge that has been leveled by Ms. Glavin. We believe the U.S. Attorney understood that when he refused prosecution.

MS. GLAVIN: Objection; move to strike.

THE COURT: Counsel, the portion of Mr. Garbus' statement about refused to prosecute is stricken.

Mr. Garbus, you will recall I know that when Judge

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Opening Statement - Garbus

1 Kaplan offered the case to the United States Attorney's Office,
2 the United States Attorney's Office respectfully declined to
3 prosecute because of a lack of resources. Characterizing it a
4 hundred times as a refusal is not going to make it so and that
5 is also irrelevant.

6 MR. GARBUS: We will also look into the reasons why
7 the prosecutor chose not to prosecute.

8 THE COURT: That is not relevant to the charges at
9 issue, sir.

10 MR. GARBUS: We believe it is.

11 In June 2018, Donziger said he saw what was happening
12 in the case. There have now been two months of litigation on
13 Chevron's contempt claims. Yet the Court refuses to provide
14 even the most simple baseline guidance on the status of the
15 stay order.

16 Oh, by the way, Ms. Glavin did not even mention the
17 decision of the Second Circuit two months ago after this
18 prosecution started when the Court dealt with the vagueness of
19 the order that he was supposed to follow.

20 MS. GLAVIN: Objection; relevance.

21 THE COURT: Mr. Garbus, everybody in this courtroom I
22 am certain has read and memorized the Court of Appeals
23 decision. Let's just keep going to relevant material, please,
24 sir.

25 MR. GARBUS: The court appears -- and this is Donziger

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Opening Statement - Garbus

1 speaking -- a nondecision that intentionally withholds
2 information about the applicable law while addressing
3 Mr. Donziger to proceed with discovery and sworn testimony. He
4 explained to the Court again and again the issues he was
5 facing. In October 2018 he said -- and this is what the Second
6 Circuit looked at -- I don't see how you can try a case without
7 being aware that two months ago the Second Circuit rendered a
8 decision. I'll go back. The Court has refused to address the
9 key issue underlying Chevron's original contempt motion for
10 over six months now.

11 Meanwhile the Court has green-lighted Chevron's
12 outrageously intrusive discovery, intimidation and demonization
13 campaign. All of which again has zero basis to proceed if
14 there is no colorable contempt. He said again -- and this is
15 again and again and again in his papers -- the Court has
16 refused for over a year to rule substantively on the merits in
17 the main contempt motion and instead held open the motion as a
18 way of allowing Chevron to conduct a massive campaign of
19 intrusive discovery of otherwise irrelevant topics targeting
20 poor internal deliberation and a social activity of the team of
21 human rights activists and funders seeking to hold Chevron
22 accountable.

23 Mr. Donziger filed affidavit after affidavit. His
24 lawyers came to court and they said the same thing. There are
25 many quotes about their attempt to deal with what they saw as an

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Opening Statement - Garbus

1 ambiguous order. And the Second Circuit six weeks ago said
2 that that order was ambiguous. How can that be relevant to
3 this proceeding?

4 THE COURT: That the order that the Second Circuit, a
5 portion of the order of the Second Circuit reversed as not an
6 issue here, sir. That's why.

7 MR. GARBUS: We disagree.

8 Mr. Donziger saw that he was being asked to engage in
9 a discovery proceeding aimed at determining whether he violated
10 an injunction without being allowed to know what the injunction
11 said, at the very least how the court interpreted that
12 injunction. He tried very, very hard to get Judge Kaplan to
13 recognize the importance of the stay order. He saw
14 clarification. He filed a motion to dismiss. He filed a
15 motion for declaratory judgment. He filed a motion for
16 protective order. He filed a Hail Mary interlocutory appeal
17 and he filed a motion for a stay. It was all denied. It was
18 his attempt to get a clarification again, it was the Second
19 Circuit the judge ruled on.

20 The evidence will show based on his statements, his
21 statements under oath he was already respectful. Never
22 contemptuous towards Judge Kaplan and at all times used the
23 legal tools at his disposal to get clarity on issues from judge
24 Kaplan which Chevron did not want clarity on.

25 We find it significant that Chevron in 2010 went to

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Opening Statement - Garbus

1 the prosecutors to try and get a prosecution. The prosecutors
2 turned it down. We know again that judge, Mr. Berman turned it
3 down. We don't know how many other applications there were to
4 get a prosecution of Mr. Berman.

5 The information that we got on Friday deals with the
6 responsibilities of -- firm. And what that document indicates
7 basically or what the conversation indicated is that the
8 federal government was in no way supervising any of --

9 THE COURT: Counsel, I am just going to say to you
10 again, if you want to waste your time talking about matters
11 that are not related to the charges, be my guest. But don't
12 tell me you didn't have enough time.

13 MR. GARBUS: I will not tell you I had enough time. I
14 said that before. I said I will sit down at the 45 minute mark
15 or before.

16 Mr. Donziger stated under oath were I to just comply
17 Chevron was succeeded in gaining mere hold access for
18 confidential privilege and protected documents without any
19 legitimate basis. The same issues we were arguing this morning
20 are the same issues that Donziger was raising.

21 Mr. Donziger looked at the law including the law cited
22 to him by Chevron and by Judge Kaplan and he and his attorneys
23 decided that as an ethical and legal matter the appropriate and
24 necessary approach was to voluntarily and respectfully
25 undertake, accept a civil contempt citation as it is sometimes

L5AADON2

Opening Statement - Garbus

1 called in order to perfect the appellate jurisdiction and to
2 ask the appeals court to consider his interpretation of the
3 stay order as we know it did. There is a long line of law
4 Supreme Court cases, Second Circuit cases, lower court cases
5 saying this is exactly what she should do. Mr. Donziger relied
6 on his own legal skills, plus the legal skills of the
7 professors and law people who worked with him. He said, he was
8 very clear, very clear that in order to protect his client
9 about what he was doing and very clear that he was inviting
10 citation. He was not being disrespectful. He said, his words,
11 I am not ethically able to comply with the Court's orders to
12 produce mountains of confidential and privileged material to
13 Chevron under a wholly improper purported privilege waiver --
14 and before the Court has even ruled on the core issue.

15 (Continued on next page)

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L5AVDON3

Opening - Mr. Garbus

1 MR. GARBUS: He then said, based on the advice given
2 to him by counsel: My only option, as I understand it, is to
3 defy the Court's order and seek appellate review of any
4 contempt sanction.

5 My understanding is that this process, while involving
6 a contempt finding, can be conducted in a respectful and timely
7 fashion. The prosecutor in her opening mentioned none of this.

8 Mr. Donziger repeatedly assured the Court that if he
9 was unsuccessful on appeal, he would have no choice and would
10 comply with the discovery orders.

11 He said on November 2018: If that appeal is decided
12 adverse to me, and I am left with no choice but to produce the
13 documents, I will.

14 On April 2019: I have never suggested that I would
15 not ultimately comply with the Court's orders if my objections
16 are rejected on appeal.

17 On June 2019, he said: I have committed to comply
18 with this Court's orders, even in violation of my
19 constitutional rights and the rights of others if I am unable
20 to obtain relief on appeal.

21 Mr. Donziger takes his responsibility to his client,
22 the people of Ecuador, the people who led very tragic finds
23 because of Chevron's behavior, that he should do exactly what
24 he did. He stayed within the law. The path of contempt
25 jurisdiction, token contempt, or symbolic contempt, is a lawful

L5AVDON3

Opening - Mr. Garbus

1 path and disgust in the cases, I must say not in the cases that
2 you've dealt with, but it is there.

3 And Mr. Donziger fully intended to comply if he was
4 not successful in the path, and repeatedly told the Court he
5 would comply if he was not successful on appeal. There could
6 be no question about that.

7 We have a video of Mr. Donziger, so you can hear his
8 own words. He will be talking, and we would ask permission --

9 THE COURT: Openings aren't evidence. I don't know
10 why you're putting this in.

11 MR. GARBUS: It is, what he has said, exactly what
12 Chevron seeks to criminalize: A transparent, thoughtfully,
13 respectful undertaking, a civil contempt citation as a means to
14 obtain contempt jurisdiction.

15 The Second Circuit six weeks ago understood that, and
16 get appellate review prior to producing discovery materials
17 over an objection of privilege and constitutional protection.
18 Such conduct has never been criminalized in any case that we
19 have found or has been cited.

20 The Second Circuit decision says: We hold that the
21 injunction previously affirmed by this Court, the injunction
22 that he's being charged now for having violated, was
23 insufficiently clear and unambiguous when read alongside the
24 district court's explanation --

25 THE COURT: Mr. Garbus, I don't know why you're

L5AVDON3

Opening - Mr. Garbus

1 reading the Second Circuit opinion, and particularly reading it
2 in a very selective manner.

3 MR. GARBUS: I'll try and read it less selectively.

4 Because we find that the stay order created ambiguity
5 as to what precisely Donziger could no longer do to assist his
6 clients in raising funds, we agree that the contempt finding on
7 that limited issue cannot stand.

8 The Court said: An injunction must leave no doubt in
9 the minds of those to whom it is addressed precisely what acts
10 are forbidden to support contempt finding. And the Court of
11 Appeals said at page 42: The order injected ambiguity into an
12 otherwise largely unambiguous injunction.

13 The private prosecution that we face today, what we
14 heard is the extraordinary financial contribution apparently
15 that Chevron has made to the contribution, to this prosecution.
16 We also know the enormous contribution that Seward & Kissel has
17 made to this prosecution.

18 MS. GLAVIN: Objection.

19 THE COURT: Sustained.

20 Mr. Garbus, this is not a press conference.

21 MR. GARBUS: Pardon me?

22 THE COURT: This is not a press conference. We are
23 here to talk about the evidence in this case.

24 Openings are an opportunity for the lawyers to give
25 the Court a preview of what the evidence will be or what they

L5AVDON3

Opening - Mr. Garbus

1 expect it to be. That's not what you're doing.

2 MR. GARBUS: We believe the *Chevron* prosecution in
3 this case will not offer any evidence on the following issues
4 and, therefore, the prosecution must be dismissed:

5 Why Judge Kaplan refused to clarify his stay order for
6 over a year, leaving Mr. Donziger to guess, relying on the best
7 legal advice in the country, to guess because of that
8 ambiguity.

9 Why did Judge Kaplan -- or did Judge Kaplan attempt to
10 prevent appellate review of his stay order?

11 Why did Judge Kaplan, after the prosecutor said no,
12 make his own decision to elevate a civil discovery dispute that
13 could be resolved by appellate review into a criminal case?

14 MS. GLAVIN: Objection. Move to strike.

15 THE COURT: That's granted.

16 MR. GARBUS: Why did Judge Kaplan appoint your
17 Honor --

18 MS. GLAVIN: Objection. Move to strike.

19 THE COURT: Granted.

20 Mr. Garbus, this has nothing to do with the charges.
I read to you a few minutes ago the elements of criminal
21 contempt. None of them includes the material you are covering.

22 MR. GARBUS: We disagree.

23 THE COURT: Well, I'm sorry to tell you, but I'm the
24 guy who decides here.

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Opening - Mr. Garbus

1 MR. GARBUS: I'm very well aware of that.

2 THE COURT: All right.

3 MR. GARBUS: Very well.

4 No justice has been previously done to Mr. Donziger;
5 no justice will be done here.

6 THE COURT: This is not a press conference, sir.

7 MR. GARBUS: Deprived of a jury of his peers, Donziger
8 faces a near certain conviction by way of a private prosecutor
9 responsible to no one, the first prosecutor that I know of in
10 this country that this has ever happened. A prosecution with
11 violations drafted by a judge whose role we don't know. What
12 you said in the discussion with Mr. Kuby, We don't know this,
13 we don't know that. The amount of information that we don't
14 know as we walk into this prosecution, as this man faces jail
15 time, the certainty of jail time, is awful.

16 The evidence will show that the government cannot
17 sustain its burden of proof. First, that he had not been
18 prohibited from raising and being paid from third-party
19 litigation, financing with sufficient clarity, such that
20 Chevron's discovery campaign was justified, or that failure to
21 acquiesce it could be criminalized.

22 I am prepared today to go through what happened in
23 that discovery. I was prepared to go through today the
24 extraordinary amount of documents, the extraordinary amount of
25 harassment that Mr. Donziger had over the course of all these

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Opening - Mr. Garbus

1 years; and that he did not run afoul of the prohibitions when
2 he tried to advance the enforcement's efforts of his Ecuadorian
3 clients.

4 At the end of this case -- and Judge, I'm going to
5 finish very early.

6 THE COURT: Bless you, my son.

7 MR. GARBUS: We will ask you, but no, you will not
8 return a verdict of not guilty on all counts.

9 I'm reminded, the Ecuadorians were denied -- I'm going
10 to do three paragraphs. Their request to have a jury of
11 American citizens decide their claims of horrendous damage and
12 horrendous pain caused by Chevron.

13 MS. GLAVIN: Objection. Relevance.

14 THE COURT: Same thing. Mr. Garbus, absolutely.

15 MR. GARBUS: Steven Donziger was denied his request to
16 have a jury of American citizens to decide this case.

17 MS. GLAVIN: Objection. Move to strike. Relevance.

18 MR. GARBUS: But Mr. Donziger now has a different
19 jury. Some are seated in the press box.

20 THE COURT: That's totally apparent to me, Mr. Garbus.

21 MR. GARBUS: -- will tell children, men and women
22 throughout the world of what has happened in this case. That
23 may ultimately be the decision that survives the history of
24 this case.

25 I've cut out everything else so that I could fit

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1 easily within the time the Court seems to be insisting on and
2 require. Thank you.

3 THE COURT: Yes, sir. Thank you.

4 Ms. Glavin.

5 MS. GLAVIN: Your Honor, the special prosecutors call
6 Anne Champion.

7 THE COURT: Yes, ma'am.

8 MR. KUBY: Judge, before Ms. Champion takes the stand,
9 could I just get a sense of the Court's view of today's
10 schedule; break for lunch at one, resume at two, go till four?

11 THE COURT: Maybe five. I mean, this is a bench
12 trial. We can go till five.

13 MR. KUBY: We're all in masks and stuff.

14 THE COURT: I know. I don't like it any more than you
15 do, sir.

16 MR. KUBY: How about four-ish?

17 THE COURT: We'll see where we are, sir.

18 MR. KUBY: Okay. Thank you.

19 THE COURT: Ms. Champion, come right up please.

20 ANNE CHAMPION,

21 called as a witness by the Government,

22 having been duly sworn, testified as follows:

23 THE DEPUTY CLERK: State your name and spell it for
24 the court reporter please.

25 THE COURT: Ma'am, would you be sure that you speak

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Champion - direct

1 into the microphone, please, for the benefit of the court
2 reporter and the spectators.

3 THE WITNESS: Yes.

4 My name is Anne Champion; A-N-N-E, C-H-A-M-P-I-O-N.

5 MS. GLAVIN: Your Honor, just before we begin, could I
6 just check the cart to see the binders, in case Ms. Champion
7 has to refer to them?

8 THE COURT: Yes, ma'am.

9 MS. GLAVIN: Your Honor, I just want to have
10 Ms. Champion look at these so she can familiarize --

11 THE COURT: Yes, ma'am. Thank you.

12 MS. GLAVIN: I'm going to provide her with a document
13 that lists out what binder is what for purposes, to the extent
14 she needs to refer to them.

15 Ms. Champion, do you want to pull the docket sheet
16 while you're up here?

17 THE COURT: Maybe you want to have someone else help
18 with that.

19 MS. GLAVIN: Yes. That would be great.

20 THE COURT: Okay. Let's go.

21 DIRECT EXAMINATION

22 BY MS. GLAVIN:

23 Q. Okay. Ms. Champion, could you please state your name and
24 spell it for the record?

25 THE COURT: She already did that.

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1 MS. GLAVIN: Oh, sorry, your Honor.

2 Q. Ms. Champion, where do you work?

3 A. Gibson, Dunn & Crutcher.

4 Q. And how long have you worked at Gibson, Dunn & Crutcher?

5 A. Since 2006.

6 Q. And is Gibson, Dunn & Crutcher a law firm?

7 A. Yes.

8 Q. Are you a partner at Gibson, Dunn & Crutcher?

9 A. Yes.

10 Q. I should say, you're an attorney; correct?

11 A. Yes.

12 Q. What is the practice group that you work in?

13 A. Litigation generally, and then I belong to some practice
14 groups within that overarching practice group.

15 Q. And what office of Gibson Dunn do you work out of,

16 Ms. Champion?

17 A. New York.

18 Q. And have you been subpoenaed to give testimony today?

19 A. I have.

20 Q. I want to turn your attention, Ms. Champion, to civil case
21 number 11 CV 691, *Chevron Corp. v. Steven Donziger, et al.*

22 Are you familiar with that case?

23 A. Yes.

24 Q. What was your involvement?

25 A. I worked as an attorney on that case from early 2011

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1 through the end of trial; and then I also did some work during
2 the post-judgment proceedings before the district court.

3 THE COURT: Could I interrupt for just a minute?

4 My friends at the back table, you're permitted to have
5 three people, not four. I think you were told that coming in.
6 We had reserved a seat in the front row, I believe, for whoever
7 the fourth was. But we can't run the courthouse if we don't
8 take these precautions.

9 MR. KUBY: Okay.

10 THE COURT: Yes, sir. Thank you.

11 MR. KUBY: Yup, yup, yup, yup.

12 THE COURT: Forgive me. Ms. Glavin.

13 The question was: What was your involvement?

14 And had you completed your answer?

15 THE WITNESS: I think so, yes.

16 THE COURT: Thank you.

17 Ms. Glavin.

18 BY MS. GLAVIN:

19 Q. Ms. Champion, who was Gibson Dunn's client in that
20 particular lawsuit?

21 A. Chevron Corporation.

22 Q. And so you were representing the Chevron Corporation?

23 A. That's correct.

24 Q. Now, Ms. Champion, during the course of your direct
25 examination today, I'm going to be asking you a number of

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1 questions about events that happened during the course of that
2 lawsuit. My understanding is that Chevron has not waived any
3 attorney-client privilege in connection with your testimony
4 today?

5 MR. KUBY: Judge, I object to the private prosecutor
6 articulating her view of Chevron's waivers. I mean, ask
7 questions please; get answers, right? Isn't that how we do it?

8 THE COURT: I thought counsel was asking the witness
9 to confirm her understanding.

10 MR. KUBY: Okay.

11 THE COURT: Thank you.

12 Ma'am, do you need the question again?

13 THE WITNESS: No, I don't think so.

14 A. Were you done with the question?

15 Q. Well, I was asking if my understanding is correct --

16 A. Yes.

17 Q. -- that the Chevron Corporation has not waived any
18 attorney-client privilege with Gibson, Dunn & Crutcher with
19 respect to the *Chevron* case; is that right?

20 A. That's correct, nor attorney work product.

21 Q. So in connection with your testimony today and my
22 questions, my intent is not to elicit answers --

23 MR. KUBY: Judge, I'm sorry.

24 The private prosecutor's intent, a preamble to what
25 she -- I mean, come on.

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1 THE COURT: Mr. Kuby, let her get the question out.
2 What she's going to tell her, no doubt, is, I don't want you to
3 tell me any privileged information.

4 MR. KUBY: Okay.

5 THE COURT: Let her get it out.

6 MR. KUBY: All right.

7 THE COURT: Counsel.

8 MR. KUBY: Withdrawn.

9 THE COURT: Yes, sir.

10 Counsel.

11 BY MS. GLAVIN:

12 Q. So during my questioning today, my intent is not to ask you
13 to elicit anything that might touch upon attorney-client or
14 attorney work product. And so I would ask you to let me know
15 if I tread upon that, because that is not my intent.

16 Okay, Ms. Champion?

17 A. Sure. Thank you.

18 Q. Now, Ms. Champion, with respect to that particular lawsuit,
19 particular litigation, was there a lawsuit filed by Chevron
20 Corp.?

21 A. Yes.

22 Q. When was that lawsuit filed?

23 A. February 1st, 2011.

24 Q. And was the complaint in that lawsuit amended at some
25 point?

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1 A. Yes, it was amended, I believe, in April of 2011.

2 Q. And at a high level, Ms. Champion, could you summarize what
3 some of the allegations that Chevron alleged in that lawsuit?

4 MR. KUBY: I'm sorry, Judge, I don't know what "a high
5 level" means.

6 THE COURT: Are you able to answer the question as
7 phrased, ma'am?

8 THE WITNESS: Yes.

9 THE COURT: Go ahead.

10 Overruled.

11 A. Chevron alleged violations of the Racketeering Influence
12 and Corrupt Organizations Act against Stephen Donziger, his law
13 firms, two Ecuadorian organizations, Selva Viva and the FDA.

14 THE COURT: Would you spell the name of the first
15 organization for the court reporter please?

16 THE WITNESS: S-E-L-V-A, V-I-V-A.

17 A. As well as Stratus Consulting, a Colorado consulting firm.
18 And also alleged some torts against the Lago Agrio Plaintiffs,
19 the 48 individual Lago Agrio Plaintiffs, as well as a
20 declaratory judgment claim under the New York Recognition Act
21 based on fraud and extortion in the underlying Ecuadorian
22 proceedings against Chevron.

23 Q. Ms. Champion, I'd like to break that down, the defendants
24 that were sued.

25 You mentioned an organization called the FDA. What is

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1 that?

2 A. That's the Frente de Defensa de la Amazonia.

3 Q. And you also mentioned -- I think you said 47 or 48
4 plaintiffs. Could you explain who those plaintiffs were that
5 Chevron was suing in this litigation in New York?

6 A. Yes. So in 2003, a lawsuit was brought against Chevron in
7 Ecuador alleging claims for environmental damage in parts of
8 the Ecuadorian Amazon. And the 48 named plaintiffs in that
9 case were defendants in Chevron's lawsuit, essentially
10 vicariously liable for the fraudulent acts of Mr. Donziger and
11 his co-conspirators.

12 So Chevron had also sued a variety of Ecuadorian
13 attorneys and representatives of those plaintiffs as well in
14 that case. We call the Lago Agrio Plaintiffs the LAPs.
15 Sometimes you may hear that used as well.

16 Q. And so Chevron was suing here in New York those defendants.
17 And what was Chevron asking for in that lawsuit?

18 A. Well, it was asserting violations of RICO, as well as, as I
19 said, some torts, unjust enrichment, fraud, and seeking a
20 declaration that the Ecuadorian judgment was unenforceable,
21 seeking injunctive relief and damages under RICO.

22 Q. And when you say "the Ecuadorian judgment," what do you
23 mean by that?

24 A. Shortly after the RICO case was filed on February 14th,
25 2011, the Ecuadorian court issued a judgment against Chevron in

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1 that underlying Ecuadorian proceeding.

2 Q. And what was the amount of that judgment that had been
3 issued against Chevron in that Ecuadorian court?

4 A. It was around 8.5 billion. But the judgment also provided
5 that it would double if Chevron did not apologize within a
6 certain number of days. And so the amount did double after
7 that time period expired.

8 Q. So the \$8.6 billion judgment doubled. And was the doubling
9 of that judgment the ultimate outcome in the Ecuadorian
10 litigation?

11 MR. KUBY: I'm sorry, Judge. Assumes a fact not in
12 evidence, the absence of the Chevron apology.

13 THE COURT: I think counsel is just asking the witness
14 what the final number was.

15 MR. KUBY: Okay.

16 THE COURT: Are you able to answer that?

17 THE WITNESS: Yes.

18 A. So the amount did double.

19 And then on one of the appeals in Ecuador, the
20 appellate court basically overruled that doubling, said that a
21 penalty like that was not allowable under Ecuadorian law. So
22 then the amount went back down to the original amount of the
23 judgment which, again, was about \$8.5 billion.

24 Q. Now, you mentioned that Steven Donziger and Steven
25 Donziger's law offices were defendants in that litigation,

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1 11 CV 691. What were the allegations that Chevron was making
2 about Mr. Donziger himself?

3 A. Essentially, that he had masterminded an extortion and
4 fraud scheme against Chevron Corporation and orchestrated that
5 scheme from the U.S.

6 Q. You mentioned earlier in your testimony that there was a
7 RICO claim made in that lawsuit. Can you explain what you mean
8 by a RICO claim?

9 A. Sure. So RICO has both criminal and civil aspects to it.
10 Chevron filed a civil RICO claim against Mr. Donziger and these
11 other defendants, alleging that they had engaged in a variety
12 of criminal acts related to the Ecuadorian litigation,
13 including fabricating evidence, bribing a court-appointed
14 special master, damages expert, bribing the judge, ghostwriting
15 the special master's damages opinion, ghostwriting the ultimate
16 judgment, as well as engaging in an extortion and pressure
17 campaign here in the U.S. against Chevron, which included
18 things like false criminal reports against the company, false
19 publicity, and things of that nature.

20 Q. Now, in connection with the civil case that Chevron
21 filed -- and forgive me if I already asked you this, that
22 Chevron filed with the district court, what district court did
23 they file this lawsuit in?

24 A. Right here in the Southern District of New York.

25 Q. And did Mr. Donziger in that civil case enter a notice of

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1 appearance?

2 A. He did ultimately enter a notice of appearance, I believe,
3 in 2013.

4 Q. I'm going to show you what's marked as Government Exhibit
5 1147. Do you recognize that exhibit?

6 A. Yes. This is Mr. Donziger's notice of appearance on behalf
7 of himself as well as the Law Offices of Steven R. Donziger,
8 and Donziger & Associates PLLC.

9 MS. GLAVIN: Move for admission of 1147.

10 MR. KUBY: No objection.

11 And because there are so many documents from the
12 docket in this case, unless I do object to a specific one, why
13 don't we just deem it admissible.

14 THE COURT: Great idea.

15 MR. KUBY: Admitted. Save us some time.

16 THE COURT: The court reporter thanks you.

17 (Government's Exhibit 1147 received in evidence)

18 BY MS. GLAVIN:

19 Q. Now, Ms. Champion, are you admitted to practice in the
20 Southern District of New York?

21 A. I am.

22 Q. And when an attorney enters a notice of appearance on a
23 docket in a case, what, if anything, does that mean in terms of
24 an attorney receiving any filings in that case?

25 A. From that point, the attorney would receive ECF

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1 notifications, electronic case filing system automatic
2 notifications of anything that gets posted to the docket.

3 Q. Now, was there a trial held on the complaint that Chevron
4 Corp. had filed against Steven Donziger and others?

5 A. Yes, in the fall of 2013.

6 Q. And where was that trial held?

7 A. Here in the Southern District of New York; I think on this
8 floor, maybe one or two floors up or down.

9 Q. In this courthouse?

10 A. Yes.

11 Q. How long did the trial take?

12 A. It was about seven weeks.

13 Q. And what judge presided over that trial?

14 A. Judge Lewis Kaplan.

15 Q. And did Judge Kaplan preside over the entire lawsuit,
16 11 CV 691?

17 A. He did.

18 Q. Following that trial, did Judge Kaplan issue a judgment?

19 A. He did.

20 Q. In whose favor was that judgment?

21 A. Chevron Corporation.

22 Q. And when was that judgment issued?

23 A. March 4th, 2014.

24 Q. I'm going to show you what is Government Exhibits 1874 and
25 1875. I move for their admission.

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(Government's Exhibits 1874, 1875 received in evidence)

Q. With respect to Government Exhibit 1875, do you have that on your screen?

A. Yes.

Q. Okay. What's that exhibit?

A. This is the judgment entered against the Donziger defendants and the defendants Camacho and Piaguaje following the RICO trial.

THE COURT: Spell it for the court reporter please,
ma'am.

THE WITNESS: Sure. C-A-M-A-C-H-O, and
P-I-A-G-U-A-J-E.

THE COURT: Mr. Kuby, is it okay with you, maybe I'll ask Ms. Glavin to say "on the docket sheet." If you say that, we will understand that unless you object, the exhibit is not objected to and is received. Is that all right with you?

MR. KUBY: Lovely.

THE COURT: Wonderful.

BY MS. GLAVIN:

Q. With respect to Government Exhibit 1875, the judgment was with respect to the Donziger defendants. So it reads: Steven Donziger, the Law Offices of Steven Donziger, and Donziger Associates, and also these two other defendants, Mr. Camacho and Mr. Piaquaje. What happened to all of the other

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1 defendants?

2 A. They did not appear; they defaulted. So these were the two
3 Lago Agrio plaintiffs that appeared in the case.

4 Q. And with respect to some of the other entities, Stratus
5 Consulting, the Stratus defendants?

6 A. They had settled out prior to trial. And the remaining
7 Ecuadorian defendants, to be clear also, so the FDA, Selva
8 Viva, the other individuals in Ecuador that were sued also did
9 not appear and defaulted.

10 Q. And just so the record is clear, Selva, S-E-L-V-A; Viva,
11 V-I-V-A, what is that?

12 A. That entity was created in order to administer funds and
13 basically receive and administer funds for the case in Ecuador.

14 THE COURT: Can I interrupt?

15 Receive and administer funds. Receive funds from
16 whom?

17 THE WITNESS: Well, the case was originally funded by
18 a Philadelphia contingency fee plaintiffs' attorney, Joseph
19 Comb. So he would give money, and they would disburse it to
20 the various consultants, assistants, lawyers that they had to
21 pay in Ecuador.

22 THE COURT: Thank you.

23 THE WITNESS: No problem.

24 BY MS. GLAVIN:

25 Q. And Ms. Champion, the trial that took place in front of

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1 Judge Kaplan in the fall of 2013, did you personally attend
2 that trial?

3 A. I did.

4 Q. And did Steven Donziger testify in that trial?

5 A. He did.

6 Q. Were you present for his testimony?

7 A. I was.

8 Q. Okay. Do you see Mr. Donziger in the courtroom today?

9 A. Yes. He's sitting in, I think, the front row of the
10 gallery with the "Free Donziger" mask on.

11 Q. The gray hair?

12 A. Yes.

13 MS. GLAVIN: Reflect the identification.

14 THE COURT: Yes, ma'am.

15 Q. Now, with respect to the RICO judgment that was issued,
16 what was the relationship between that RICO judgment, which is
17 Government Exhibit 1875, and Government Exhibit 1874?

18 MS. GLAVIN: If you could pull that up on the screen.

19 A. So 1874 is the Court's opinion which sets forth its
20 findings of facts and conclusions of law supporting the
21 judgment.

22 Q. And going back to 1875, if you could summarize,

23 Ms. Champion, what Judge Kaplan ordered in Government Exhibit
24 1875.

25 A. Among other things, he imposed a constructive trust over --

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1 for the benefit of Chevron over proceeds of the Ecuadorian
2 judgment. He required Mr. Donziger to assign his interest in
3 the Ecuadorian interest to Chevron. He also enjoined
4 enforcement of the Ecuadorian judgment in the United States.
5 And he enjoined Mr. Donziger in the LAPs from monetizing the
6 Ecuadorian judgment in any way.

7 MS. GLAVIN: So if we could go to paragraph 1 of the
8 RICO judgment.

9 And your Honor, for the record, if it's okay, can I
10 read that out loud?

11 THE COURT: Yes, ma'am.

12 MS. GLAVIN: The Court hereby imposes a constructive
13 trust for the benefit of Chevron on all property, whether
14 personal or real, tangible or intangible, vested or contingent,
15 that Donziger has received or hereafter may receive, directly
16 or indirectly, or to which Donziger now has or hereafter
17 obtains any right, title, or interest, directly or indirectly,
18 that is traceable to the judgment or the enforcement of the
19 judgment anywhere in the world, including, without limitation,
20 all rights to any contingent fee under the retainer agreement
21 and all stock in Amazonia. Donziger shall transfer and
22 forthwith assign to Chevron all such property that he now has
23 or hereafter may obtain.

24 And Ms. Champion, with respect to Judge Kaplan's
25 reference to judgment, if you could go to paragraph 7.6. What

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1 did Judge Kaplan define the judgment to mean?

2 A. The judgment means the judgment entered in the *Lago Agrio*
3 case on February 14th, 2011, as modified by subsequent
4 proceedings.

5 Q. Was that the \$8.6 billion judgment awarded against Chevron
6 in Ecuador?

7 A. Yes.

8 Q. With respect to -- going back to Judge Kaplan's reference
9 to Amazonia, if we could go to the definitions at 7.2, Judge
10 Kaplan defines Amazonia as Amazonia Recovery Limited, an entity
11 registered in Gibraltar, together with its successors and
12 assigns. What was Amazonia?

13 A. Amazonia was an entity created, I believe, in 2012, to both
14 receive funds related to the litigation in order to fund
15 enforcement and other proceedings related to the Ecuadorian
16 litigation, as well as to disburse proceeds of the Ecuadorian
17 judgment.

18 Q. And if we could go back to paragraph 1, Judge Kaplan makes
19 reference to all rights to any contingent fee under the
20 retainer agreement. If we could go to 7.9 of the definition of
21 the retainer agreement. It states: Retainer agreement means
22 the agreement dated as of January 5th, 2011, between and among
23 each of the individual plaintiffs in the *Lago Agrio* case,
24 together with their respective successors and assigns; B, the
25 ADF; C, The Assembly; and D, Donziger & Associates PLLC,

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1 together with its successors and assigns and all successors to
2 and predecessors of the retainer agreement.

3 With respect to Judge Kaplan's paragraph 1 of the RICO
4 judgment, the imposition of the constructive trust, did Judge
5 Kaplan discuss what he meant by that in Government Exhibit
6 1874?

7 A. Yes, he did.

8 MS. GLAVIN: If we could go to Government Exhibit
9 1874, and go to --

10 THE COURT: I'm not sure it was offered, but in any
11 event, because it's on the docket sheet, it is received.

12 MS. GLAVIN: If we could go to page 487, which would
13 be the ECF page on this document.

14 Q. And Ms. Champion, could you please read on page 487, that
15 would be ECF 487, what Judge Kaplan stated in his opinion about
16 this constructive trust, starting at the top.

17 A. Headline B. Chevron is entitled to equitable relief,
18 preventing these three defendants from benefiting from the
19 fraud on the Court, and Donziger from profiting from the RICO
20 violations.

21 One, constructive trust.

22 Chief Judge, later Justice Cardozo, stated the
23 governing principle years ago in words cited many times since.

24 THE COURT: Ma'am.

25 THE WITNESS: Slow down? Sorry.

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1 THE COURT: When the court reporter's fingers are
2 steaming, you know you have to slow down.

3 THE WITNESS: Okay.

4 A. A constructive trust is the formula through which the
5 conscience of equity finds expression, when property has been
6 acquired in such circumstances that the holder of the legal
7 title may not in good conscience retain the beneficial
8 interest, equity converts him into a trustee.

9 Among the circumstances in which a constructive trust
10 may be imposed are those in which the defendant stands to
11 receive a benefit by virtue of fraud. In this context,
12 moreover, fraud may mean misrepresentation giving rise to a
13 cause of action for deceit or it may imply the acquisition of
14 property by some other type of wrongdoing or by any type of
15 inequitable conduct.

16 Q. If you could continue on to the bottom, and we go on to
17 page 488, starting with "The."

18 A. The imposition of a constructive trust on Donziger's right
19 to a contingent fee among other property traceable to the
20 judgment and the other defendants' rights to recovery fits this
21 mold to a T. Donziger's retainer agreement with the LAPs and
22 the ADF, which is governed by New York law, provides that
23 Donziger is entitled to be paid, A, 6.3 percent of all amounts
24 paid in respect of the litigation; plus B, any arrearages in
25 his monthly retainer; plus reimbursement for expenses. His

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1 contingent fee is payable only out of plaintiff collection
2 monies which the retainer agreement defines as amounts paid
3 whether from Chevron Corporation --

4 THE COURT: Slowly.

5 A. -- any other party listed as a defendant in respect of the
6 litigation, or any other party added or joined to the
7 litigation as a defendant. Thus, the judgment is the
8 indispensable predicate of his right to collect a contingent
9 fee with respect to the *Lago Agrio* case.

10 Q. If you could continue on.

11 A. That judgment is the direct result of fraud by Donziger.

12 Moreover, his right to a contingent fee and the fee
13 itself are properties subject to execution and attachment, and
14 certainly to the imposition of a constructive trust.

15 Q. If I could stop you right there.

16 Go back to the RICO judgment, 1875 in evidence.

17 If we could go to paragraph 3 of the RICO judgment.

18 Paragraph 3 states: Donziger shall execute in favor
19 of Chevron a stock power transferring to Chevron all of his
20 right, title, and interest in his shares of Amazonia. And
21 Donziger and the LAP representatives, and each of them shall
22 execute such other and further documents as Chevron reasonably
23 may request or as the Court hereafter may order to effectuate
24 the foregoing provisions of the judgment.

25 Ms. Champion, with respect to paragraph 3,

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1 Mr. Donziger's Amazonia shares, did Judge Kaplan discuss that
2 in his opinion, which is Exhibit 1874?

3 A. Yes, he did.

4 MS. GLAVIN: We could go to Government Exhibit 1874 at
5 ECF page 489.

6 Q. And if you could read on page 489, the last two sentences
7 on that page starting with "Moreover."

8 A. Moreover, Donziger owns, directly or through a nominee,
9 shares of a Gibraltar company, Amazonia, through which the
10 property collected on the judgment is to be funneled. Those
11 shares too are subject to a constructive trust as whatever
12 value they now have -- excuse me, as whatever value they now or
13 hereafter may have is a direct function of the fraud
14 perpetrated by Donziger.

15 MS. GLAVIN: And if we could turn to page ECF 281,
16 Government Exhibit 1874, and footnote 1110.

17 Q. If you could just read the first sentence beginning with
18 "The defendants."

19 A. The defendants in May 2012 did create a Gibraltar company,
20 Amazonia Recovery Limited, for receipt and distribution of any
21 funds in consequence of the judgment.

22 Q. Now, with respect to Government Exhibit 1875, the RICO
23 judgment, if you could go to paragraph 4 of that judgment.

24 You had mentioned in your testimony that the judgment
25 prohibited Mr. Donziger from seeking enforcement of that

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1 Ecuadorian judgment in the United States. Is that what's
2 reflected here in paragraph 4?

3 A. Yes.

4 MS. GLAVIN: We could turn to paragraph 5 of the RICO
5 judgment.

6 Q. And if you could read that aloud, Ms. Champion.

7 A. Donziger and the LAP representatives, and each of them, is
8 hereby further enjoined and restrained from undertaking any
9 acts to monetize or profit from the judgment, as modified or
10 amended, or any new judgment, including, without limitation, by
11 selling, assigning, pledging, transferring, or encumbering any
12 interest therein.

13 Q. And if you could turn your attention, Ms. Champion, to
14 paragraph 9 of the RICO judgment, where it says: Ordered,
15 adjudged, and decreed as follows.

16 What did Judge Kaplan direct there?

17 A. The judgment provides that Chevron shall recover of
18 Donziger and the LAP representatives, and each of them, jointly
19 and severally, the cost of this action pursuant to Federal Rule
20 of Civil Procedure 54(d)(1), and 28 U.S.C. 1920.

21 Q. And if you could go to paragraph 10 of the RICO judgment
22 and read the last sentence.

23 A. This Court retains jurisdiction of this case and over these
24 parties for purposes of enforcing and resolving any disputes
25 concerning this partial judgment.

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Champion - direct

1 Q. With respect to the partial judgment, Ms. Champion, what
2 did you understand that to mean?

3 A. I think that refers to the fact that costs had not been --
4 not yet been entered and awarded.

5 Q. Now, with respect to the 2011 retainer agreement, which is
6 defined in paragraph 7.9 of the RICO judgment, Government
7 Exhibit 1875, the January 5th, 2011 agreement, I want to show
8 you what is Government Exhibit 1978-6.

9 MS. GLAVIN: This is on the docket. I'd move for
10 admission.

11 THE COURT: Received.

12 MR. KUBY: Excellent.

13 (Government's Exhibit 1978-6 received in evidence)

14 Q. Do you recognize this document, Ms. Champion?

15 A. Yes. This is the 2011 retainer agreement that is
16 referenced in the judgment.

17 Q. And with respect to the first paragraph of that retainer
18 agreement, who are the parties to that agreement?

19 A. The individual Lago Agrio plaintiffs, the FDA, a group
20 called the Asamblea or assembly of those affected by Texaco,
21 and Donziger & Associates PLLC.

22 Q. And Ms. Champion, what is the Asamblea?

23 A. My understanding is that the assembly is a group of
24 indigenous groups in the Ecuadorian Amazon who, although they
25 were not named as plaintiffs, or not all of them were named as

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Champion - direct

1 plaintiffs, had an interest in the case.

2 MS. GLAVIN: And if we could turn -- with respect to
3 Exhibit 1978-6, if we could turn to --

4 Q. Oh, before I get to that, the Asamblea de afectados por
5 Texaco, did that particular organization maintain that name
6 during the course of the litigation or take on a different
7 name?

8 A. At some point it became UDAPT instead of ADAPT. So we
9 often would say "ADAPT" for Asamblea de afectados por Texaco.
10 And at some point it became the union instead of the assembly,
11 and it became known as UDAPT. So everything the same, except
12 Union de afectados por Texaco.

13 Q. When you say "UDAPT," could you spell that?

14 A. UDAPT, U-D-A-P-T.

15 Q. Ms. Champion, during the 2013 trial, did Mr. Donziger
16 testify about this retainer agreement which is 1978-6?

17 A. Yes.

18 Q. And did he acknowledge that this was the retainer agreement
19 that he had entered into?

20 A. Yes.

21 MS. GLAVIN: If we could go to paragraph -- page 4,
22 paragraph 3A of that agreement.

23 Q. Do you see where it says fees and expenses, budget and
24 billing?

25 A. Yes.

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Champion - direct

1 Q. It states: A, contingent fee. As compensation for its
2 services hereunder, the firm shall be entitled to an active
3 lawyer percentage of 31 and-one-half percent of the total
4 contingency fee payment. The total contingency fee payment
5 means an amount equal to 20 percent of all plaintiff collection
6 monies.

7 Now, Ms. Champion, had you done the math as to what
8 these percentages work out to with the RICO judgment?

9 A. Well, yes.

10 Q. I'm sorry, not with the RICO judgment, the Ecuadorian
11 judgment.

12 A. Understood.

13 So 31.5 percent of 20 percent is 6.3 percent. And if
14 the judgment were fully collected, Mr. Donziger's percentage
15 would be on the order of \$560 million.

16 Q. Now, I want to turn your attention to Mr. Donziger's
17 testimony at the RICO trial. I'm going to show you what is
18 marked as Government Exhibit 200. Just go to the second page.

19 Do you recognize this exhibit?

20 A. Yes. This is a transcript from the trial from November
21 18th, 2013.

22 Q. And have you had an opportunity before today to review this
23 transcript?

24 A. Yes.

25 Q. And does this transcript include the testimony of

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Champion - direct

1 Mr. Donziger?

2 A. Yes.

3 MS. GLAVIN: If we could turn to the transcript page
4 2490, and focus on lines 23.

5 Q. And Ms. Champion, I'd like to read the transcript from page
6 2490, line 23, to 2491, line 11. And for purposes of reading
7 that provision, I'll take on the role of asking the questions
8 that were posed to Mr. Donziger; if you could read his answers.
9 Okay?

10 (Reading)

11 "Q. Mr. Donziger, I want to ask you a few questions about
12 Amazonia Recovery Limited. That's a Gibraltar company;
13 correct, sir?

14 "A. Yes.

15 "Q. And you're a shareholder in that company; correct?

16 "A. That's correct."

17 THE COURT: Slowly, ladies.

18 "Q. That's because of your contingency fee interest; correct?

19 "A. Yes.

20 "Q. Can you tell me what percentage of the shares of Amazonia
21 Recovery Limited you have, sir?

22 "A. The structure of the case was designed -- I mean, the
23 structure of that entity was designed to reflect the
24 contingency fee equity in the lawsuit, so it's roughly the
25 equivalent."

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Champion - direct

1 MS. GLAVIN: If we could turn to page 2491 of the
2 transcript. And we're going to read lines 19 to lines 24 in
3 the same manner. So at line 19: (Reading)

4 "Q. You own shares in Amazonia Recovery Limited; correct?

5 "A. Yes.

6 "Q. You can't tell the Court what number of shares you own in
7 Amazonia Recovery Limited?

8 "A. I don't know the number. It's the equivalent of what the
9 contingency fee interest was before it was created."

10 Q. Now, Ms. Champion, after Judge Kaplan issued the RICO
11 judgment, which is Government Exhibit 1875, did Mr. Donziger
12 appeal Judge Kaplan's judgment to the Second Circuit?

13 A. He did.

14 Q. And did Mr. Donziger move for a stay from the district
15 court of that RICO judgment?

16 A. He did.

17 Q. And did Judge Kaplan rule on the stay?

18 A. He did. He granted it in part.

19 Q. So with respect to Mr. Donziger's motion for a stay at the
20 RICO judgment, I'm going to show you what's Government Exhibit
21 1888, which is on the docket sheet, I'd move it into evidence.

22 THE COURT: Received.

23 (Government's Exhibit 1888 received in evidence).

24 Q. Government 1888 is entitled "Defendant's Emergency Motion
25 for a Stay Pending Appeal or in the Alternative for a Temporary

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Champion - direct

1 Administrative Stay." If you could go to page 22, ECF page 22
2 of that exhibit.

3 Did Mr. Donziger sign this motion?

4 A. He did.

5 Q. Now, did Mr. Donziger's motion for a stay discuss the
6 Amazonia shares?

7 A. It did, yes.

8 Q. We could turn to page 15.

9 MR. KUBY: Judge, excuse me.

10 I have an objection --

11 THE COURT: Yes, sir.

12 MR. KUBY: -- to this whole line of questioning.

13 The audience, the noncognoscenti, might be forgiven
14 for not understanding that Mr. Donziger is not charged with any
15 count in criminal contempt from his failure to turn over the
16 Amazonia shares.

17 Now, I do recognize that at one point they were
18 being -- the contingency fee and the Amazonia shares were, in
19 fact, being treated as one and the same. There came a time,
20 however, where they branched off. And the Amazonia share issue
21 became literally a nonentity, was out of the case.

22 Given the Court's concern that you articulated when
23 Dear Brother Garbus opened about sticking to evidence that is
24 relevant to the actual charges in this case, I would request
25 that the Amazonia discussion be somewhat cabined, because we've

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Champion - direct

1 taken up, sort of, most of the testimony about it, and it's not
2 one of the charges in the case.

3 THE COURT: Ms. Glavin.

4 MS. GLAVIN: Yes, your Honor.

5 The government provided the defense a year ago with
6 notice that we intended to introduce this evidence with respect
7 to Mr. Donziger's refusal to turn over the Amazonia shares for
8 several reasons:

9 One, it completes the story with respect to his
10 failure to turn over the contingency. It completes the story
11 with respect to his failure and disobedience in turning over
12 his contingency fee interest.

13 Second, it goes to Mr. Donziger's state of mind with
14 respect to when he turned over the Amazonia shares finally in
15 March of 2018; he delayed turning over the contingency fee
16 interest.

17 Given the relationship which Mr. Donziger testified at
18 trial about the Amazonia shares, as well as its relationship to
19 his contingency fee interest, this does become relevant to
20 Mr. Donziger's state of mind in disobeying the direction that
21 he turn over the 2011 interest in the contingency fee, as well
22 as his state of mind in the 2017 agreement.

23 THE COURT: Mr. Kuby.

24 MR. KUBY: Yes, Judge.

25 We're not claiming unfair surprise here.

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Champion - direct

1 THE COURT: I got it.

2 May I just go off the record for one second.

3 (Off record)

4 THE COURT: Sir, on the record.

5 MR. KUBY: So we're not claiming we're surprised in
6 any way; in fact, we submitted a month or so ago saying, We'll
7 defer this to time of trial. And I haven't been jumping up at
8 first mention of this because, in fact, there is some
9 groundwork that needs to be laid. That groundwork for Amazonia
10 has been laid.

11 Judge Kaplan separates out the contingency fee
12 interest issue and the documents that Steven Donziger was
13 required to execute with respect to the contingency fee
14 interest. Judge Kaplan asserts that Steven Donziger did not do
15 them in a timely fashion. That, in fact, is Count Four and
16 also Count Five, derivatively.

17 Amazonia falls out of the case years ago.

18 (Continued on next page)

19

20

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L5AAADON4

Champion - Direct

1 THE COURT: I understand. What do you say to
2 Ms. Glavin's suggestion that that goes to Mr. Donziger's state
3 of mind?

4 MR. KUBY: What state of mind does it go to. I
5 understand the phrase "state of mind". I understand it is sort
6 of a stock kind of thing to say.

7 THE COURT: I took from her argument to mean the state
8 of mind of not obeying court orders; am I wrong on that?

9 MS. GLAVIN: No, your Honor.

10 MR. KUBY: Well, I don't know that not obeying certain
11 court orders is an actual state of mind that's at issue as a
12 general matter. Steven Donziger's state of mind with which he
13 either complied or did not comply with certain orders is very
14 much.

15 THE COURT: Well, that's exactly correct because you
16 well know the prosecutor has to prove that Mr. Donziger had the
17 intent consciously to disregard a court order. And I think I
18 understand Ms. Glavin to be saying that the material with
19 respect to Amazonia evidences an intent consciously to
20 disregard that court order even though it's not an order at
21 issue in this case.

22 What do you say to that?

23 MR. KUBY: Well, I understand that that's sort of
24 basically is a character assault which has been going on at the
25 beginning of this case that Steven Donziger disobeys court

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Champion - Direct

1 orders. But it doesn't -- we're not claiming absence of
2 mistake. We're not claiming he didn't understand specific
3 orders, although, he did request clarification repeatedly.
4 What the prosecutor is actually doing is using "state of mind"
5 as a substitute for an attack on Mr. Donziger's character which
6 is totally appropriate when and if Mr. Donziger takes the stand
7 and he can talk about all the orders he complied with and we
8 can tally them up in some fashion but it's not relevant here.

9 THE COURT: Anything else?

10 MS. GLAVIN: The failure to -- the Amazonia shares,
11 the story behind that and the actions he took to try not to do
12 that is an inextricably intertwined in the indictment because
13 he doesn't want to turnover those shares. And when that
14 happens you will see that Chevron then moves to get his
15 contingency fee interest because the evidence will be if I
16 finish this portion of the draft, I don't enjoy spending a lot
17 of time on Amazonia either but it gives the background for what
18 happens with respect to Count Four.

19 MR. KUBY: All I will say in response, judge, is if
20 this is going to be permitted which is within your discretion,
21 I take it that when it comes time to cross-examine about the
22 Amazonia issue the Court will grant similar -- your discretion
23 will be exercised in a way commensurate to both sides because
24 this is quite a lot to cross about the Amazonia stuff. I just
25 don't think it's relevant but you are the guy that makes those

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Champion - Direct

1 decisions, as you say.

2 THE COURT: Thank you, Mr. Kuby.

3 In order to complete the story, I'll permit it. And
4 also in order to submit evidence of the intent consciously to
5 disregard a court order, I will permit it.

6 Want to go to lunch friends? Five of one. I'll see
7 you here at five of two.

8 Thank you, counsel.

9 Thank you, ladies and gentlemen.

10 (Luncheon Recess)

11 AFTERNOON SESSION

12 1:55 p.m.

13

14 THE COURT: Good afternoon, ladies and gentlemen.
15 Won't you be seated.

16 BY MS. GLAVIN:

17 Q. Ms. Champion, before the lunch break we were on Government
18 Exhibit 1888 of the stay motion and I was pointing you to page
19 15 of Mr. Donziger's stay motion where it says Roman numeral
20 two, the defendants will suffer irreparable injury after a
21 stay.

22 MS. GLAVIN: If we could turn to ECF page 18.

23 Q. Ms. Champion, if you could read aloud the point four.

24 A. The court's order requires the defendants to transfer and
25 define all property whether personal or real, tangible or

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Champion - Direct

1 intangible, vested or contingent that is traceable to the
2 judgment or enforcement of the judgment anywhere in the world.
3 Thus, unless a stay issued Mr. Donziger and the other
4 defendants face a loss of real property, a loss that even if
5 temporary is recognized as irreparable harm as a matter of law.
6 Q. And if you could turn to ECF page 19 and read out loud the
7 point beginning at "fifth".

8 A. Fifth, absent a stay, this Court's order would require
9 Mr. Donziger to transfer forthwith all of his rights, title and
10 interest in his shares in Amazonia Recovery Limited. As a
11 matter of law Mr. Donziger's immediate loss of his shares in
12 Amazonia and all rights accompanying those shares constitutes
13 irreparable harm both to him and his fellow shareholders. He
14 might be able to recover his shares after an appeal if they
15 were not automatically nullified as a result of the transfer or
16 their value in dollars but no damages could ever make up for
17 the loss of his ability to exercise or sell his shares or to
18 participate in the entities affairs during the pendency of the
19 appeal.

20 Nor as already discussed above, could later relief
21 make up for the devastating impact of this forced transfer on
22 Mr. Donziger's ability to earn a living.

23 Q. Now, Ms. Champion, in connection with Mr. Donziger's motion
24 for a stay of the RICO judgment, did Mr. Donziger submit a
25 declaration in support of his application for a stay?

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Champion - Direct

1 A. Yes, he did.

2 MS. GLAVIN: If we could turn to Government Exhibit
3 1899 which is on the docket and move for admission.

4 THE COURT: Received.

5 (Government's Exhibit 1899 received in evidence)

6 MS. GLAVIN: And if we could go, title of this reads
7 Declaration of Steven Donziger in support of Defendant's Motion
8 for Stay Pending Appeal.

9 Q. If we could go to Paragraphs Three and Four of
10 Mr. Donziger's declaration if you could read those aloud,
11 Ms. Champion.

12 A. If I am forced to turnover my shares in Amazonia and
13 relinquish any interests I have in the Lagro Agrio litigation,
14 my law practice, my only means of earning a livelihood will be
15 effectively destroyed. Even if I prevail on appeal, I will not
16 be able to undue the damage to my practice suffered in the
17 interim. Amazonia is a corporation that exists to enforce the
18 Ecuadorian judgment against Chevron and to distribute any funds
19 recovered from that enforcement. Its corporate documents
20 entitled Shareholders to Vote on Various Corporate Matter.
Allowing Chevron access to corporate strategies and
communication while potentially vesting Chevron with voting
rights in a company fundamentally opposed to Chevron's
interests will irreparably harm Amazonia.

25 Q. Now, Ms. Champion, did Judge Kaplan issue an order on

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Champion - Direct

1 Mr. Donziger's motion for a stay?

2 A. He did.

3 MS. GLAVIN: I'm showing you what is Government
4 Exhibit 1901 which is in the docket and move into evidence.

5 THE COURT: Received.

6 (Government's Exhibit 1901 received in evidence)

7 Q. Ms. Champion, what is this document?

8 A. This is the court's opinion granting in part and denying in
9 part defendant's motion for a stay pending appeal.

10 Q. When was it issued?

11 A. April 25, 2014.

12 Q. If we could go to ECF, page five. And if you could read
13 the top starting with the third full sentence "as a result" to
14 the bottom of that paragraph.

15 A. As a result this motion is denied in almost all respects.

16 It is granted only to the limited extent that the court will
17 modify pending appeal the requirement that Donziger transfer
18 immediately to Chevron his rights, title and interest in
19 Amazonia shares to ensure that Chevron does not succeed to
20 ownership of those shares before the appeal is decided. In the
21 interim, the Court orders that those shares which represent
22 Donziger's right vis-a-vis his clients to a 6.3 percent share
23 of any money collected on a fraudulently procured judgment and
24 any proceeds of those shares will be held pending appeal by the
25 clerk of court for the benefit of Chevron and Donziger as their

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Champion - Direct

1 interests ultimately may appear and be voted after ten days
2 prior notice and absent a contrary order of this Court as
3 Donziger may direct.

4 Q. And if you could turn to page ECF 16 and go towards the
5 bottom of the page and read the two sentences starting with
6 "allowing".

7 A. Allowing the shares to remain in Donziger's hands pending
8 appeal would enable him to benefit from his fraud prior to any
9 collections by selling the shares and by hiding or dissipating
10 the sales precedes.

11 Taking the shares out of his hands now would prevent
12 such a result and cause no injury to Donziger that could not be
13 undone.

14 Q. And you could continue to the next two sentences.

15 A. If Donziger prevailed on appeal, the shares and what ever
16 economic benefit they may have yielded in the interim would be
17 restored to him. If he did not prevail, that fact would
18 reflect the Second Circuit's determination that Chevron, not
19 Donziger is entitled to the shares and any proceeds of the
20 shares. Putting the shares in Chevron's hands in the interim,
21 the relief awarded by this Court would cause no irreparable
22 injury to Donziger.

23 Q. If you could turn to ECF page 33 of Judge Kaplan's
24 decision. And if you could read out loud the conclusion.

25 A. The motion for a stay pending appeal is granted to the

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Champion - Direct

1 extent that paragraph three of the judgment solely pending the
2 determination of the appeal in this case is modified to read as
3 follows:

4 Donziger shall execute in favor of the clerk of this
5 court a stock power transferring to the clerk all of his
6 rights, title and interest in his shares of Amazonia. The
7 clerk shall hold the Amazonia shares thus transferred and all
8 proceeds thereof pending the determination of the appeal in
9 this case for the benefit of Donziger and Chevron as their
10 interest then may appear. Upon request by Donziger given on
11 notice to Chevron at least ten days in advance of the date for
12 the proposed vote the clerk shall vote or direct the owner of
13 record thereof such to vote such shares as directed by Donziger
14 unless otherwise ordered by the Court.

15 Donziger and the lab representatives and each of them
16 shall execute such other and further documents as Chevron
17 reasonably may request or as the Court hereafter may order to
18 effectuate the foregoing provisions of this judgment.

19 Q. And the last sentence?

20 A. It is denied in all other respects. This opinion includes
21 the court's findings of fact and conclusions of law.

22 Q. Now, Ms. Champion, following this order by Judge Kaplan on
23 April 25, 2014, did Mr. Donziger ever inform you that he had
24 executed a stock power as directed in favor of the clerk of the
25 court for his Amazonia shares?

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Champion - Direct

1 A. No.

2 Q. Did you ever see any entry in the docket of civil case 11
3 CV 6492 indicating such a stock power was executed?

4 A. No.

5 MS. GLAVIN: I show you what is Government Exhibit One
6 and in Government Exhibit 1-A.

7 Your Honor, these are the docket sheets of 11 CV 61.
8 Government Exhibit One is the docket sheet that covers the time
9 period from February of 2011 when the first complaint was filed
10 and it runs up through November of 2020.

11 Government Exhibit 1-A is pulled from Exhibit One and
12 it covers the post judgment proceedings from February of 2018
13 through I believe July 31st of 2019.

14 THE COURT: Any objection, Mr. Kuby?

15 MR. KUBY: No, no, no.

16 THE COURT: OK. Thank you.

17 MR. KUBY: July 31st is my birthday.

18 THE COURT: Happy birthday.

19 MR. KUBY: We'll be gone by then.

20 Q. Now, Ms. Champion, other than what Judge Kaplan had ordered
21 in this April 25, 2014 decision, was there any stay of that
22 March 4, 2014 RICO judgment while Mr. Donziger's appeal was
23 pending in the Second Circuit?

24 A. No.

25 Q. Did Mr. Donziger ever seek a stay before Judge Kaplan or

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Champion - Direct

1 the Second Circuit of Judge Kaplan's April 25, 2014 order
2 directing him to transfer his shares to the clerk of the court
3 pending the determination of the appeal?

4 A. No.

5 Q. What was the result of Mr. Donziger's appeal to the Second
6 Circuit of the March 2014 RICO judgment decision?

7 A. The Second Circuit affirmed in July.

8 Q. We show you what is Government Exhibit 1914 which is in the
9 docket and move for admission.

10 Ms. Champion, what is --

11 THE COURT: Received.

12 (Government's Exhibit 1914 received in evidence)

13 Q. Ms. Champion, what is this document?

14 A. This is the mandate issued by the Second Circuit on
15 November 3, 2016.

16 Q. And is this the affirmance of the RICO judgment?

17 A. Well, this is the mandate. They issued an opinion as well
18 a few months before that.

19 Q. OK. And if you go to the first page I was going to say the
20 date of the affirmance, the opinion by the Second Circuit was
21 when?

22 A. August 8, 2016.

23 Q. Now, following the Second Circuit's affirmance of Judge
24 Kaplan's decision and judgment did Donziger, did Mr. Donziger
25 seek petition to certiorari, C-E-R-T-I-O-R-A-R-I?

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Champion - Direct

1 A. He did.

2 Q. OK. And what was the result of his petition?

3 A. That was denied the following June 2017.

4 Q. I am going to show you what is marked as Government Exhibit
5 1923, which is on the docket and move for admission.

6 THE COURT: Received.

7 (Government's Exhibit 1923 received in evidence)

8 Q. On the first page of Government Exhibit 1923 is this a
9 letter from Randy Mastro filed with Judge Kaplan?

10 A. Yes.

11 Q. And who's Randy Mastro?

12 A. My partner. He was one of the lead attorneys on the case
13 for Chevron.

14 Q. OK. And with respect to Mr. Mastro's letter what was he
15 asking Judge Kaplan to do in this letter dated June 19, 2017?

16 A. He was notifying the Court of the denial of the petition
17 for certiorari and asking that the court require Donziger to
18 comply with the district in the judgment to transfer his shares
19 of Amazonia because he had not complied to that date. And then
20 also asking the Court to reactivate a motion for attorney's
21 fees that Chevron had filed and a bill of costs.

22 MR. KUBY: Judge, before we proceed, the special
23 prosecutor asked the witness what Mr. Mastro intended by this
24 document. And to me that's just fine because we're going to
25 have this witness reading a lot of documents that were authored

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Champion - Direct

1 by other people and she knows more about the case than anybody
2 except possibly Judge Kaplan. I just want to make a note of
3 that so when I start cross-examining her about what other
4 people intended as well --

5 THE COURT: The record will reflect that.

6 MR. KUBY: Ms. Champion, do you have anything else you
7 wish to add?

8 THE COURT: Excuse me. You two don't get to chat.

9 MR. KUBY: No, no.

10 THE COURT: She doesn't get to chat with you and you
11 don't get to chat with her.

12 MR. KUBY: I'll be good.

13 THE COURT: Promise?

14 The record will reflect that the question was.

15 "Q. OK. And with respect to Mr. Mastro's letter what was he
16 asking Judge Kaplan do in this letter dated June 19, 2017?

17 MR. KUBY: Point taken.

18 THE COURT: Yes, sir.

19 MR. KUBY: Withdrawn.

20 THE COURT: Yes, sir.

21 Ms. Glavin.

22 MS. GLAVIN:

23 "Q. Now, with respect to Mr. Mastro's request that Chevron is
24 asking the Court to reactivate the motion for attorneys fees
25 and bill of costs. I just want to ask what the bill of costs

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Champion - Direct

1 was referring to?

2 A. That's referring to if you recall from the judgment where
3 it awards Chevron costs pursuant to Federal Rule of Civil
4 Procedure 54 and there's a statute, applicable statute as well.
5 It's costs are awarded to the prevailing party in civil
6 litigation. And that's what that's referring to.

7 Q. And did Mr. Donziger file a response with the Court to this
8 June 19, 2017 letter to Mr. Mastro?

9 A. No.

10 Q. With respect to Government Exhibit 1923 do you see at the
11 top this is memo endorsed; do you see that?

12 A. Yes.

13 Q. OK. And if we could go to page two of this exhibit. Is
14 this an order by Judge Kaplan ruling on Mr. Mastro's request?

15 A. Yes.

16 Q. With respect to the taxing of costs at paragraph two, Judge
17 Kaplan ordered that the clerk shall proceed to tax costs. What
18 did that mean? What do you know that to mean?

19 A. Chevron would then have to submit a bill of costs for
20 taxing by the clerk. Maybe we had submitted one previously. I
21 don't recall but it would require the clerk to act on Chevron's
22 bill of costs.

23 Q. What would that eventually result in after the court
24 attaches costs?

25 A. That would result in a monetary amount that Mr. Donziger

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Champion - Direct

1 and the lab technicians would be obligated to pay.

2 Q. What's the basis for that?

3 A. The form if you pull it off the SDNY website sets forth
4 certain categories, covers things like transcripts, copies,
5 things of that nature. It's limited.

6 Q. By guess what I'm getting at is was the fact that judgment
7 was in Chevron's favor, did that have anything to do with the
8 fact that there was going to be costs tax?

9 A. Yes, exactly. Again, the prevailing party is entitled to
10 costs under the Federal Rules and Chevron corporation as
11 prevailing party was entitled to its costs.

12 Q. And going to number three in Judge Kaplan's order, which is
13 dated July 17 of 2017, Judge Kaplan states plaintiff requests
14 that the court requires Steven Donziger to comply with the
15 March 4, 2014 judgment. It complains also that Donziger did
16 not comply with that judgment as temporarily modified by order
17 dated April 25, 2014. Whether construed as request for a
18 further order or for other relief this aspect of the
19 application may not be made by letter motion. To that extent
20 it is denied without prejudice to proceeding by formal motion.

21 Now, Ms. Champion, after Judge Kaplan issued this
22 order on July 17 of 2017, in the year of 2017 did Mr. Donziger
23 execute a stock power transfer to Chevron for his interest in
24 the Amazonia shares?

25 A. If he did we did not receive it.

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Champion - Direct

1 Q. Could you go back to the first page of government, this
2 exhibit. With respect to Mr. Donziger's right to a contingent
3 fee and the 2011 retainer agreement, during the year 2014, did
4 Mr. Donziger execute a transfer or assignment to Chevron of his
5 interests in that contingent fee?

6 A. No.

7 Q. Did he do it in 2015?

8 A. No.

9 Q. Did he do it in 2016?

10 A. No.

11 Q. Did he do it in 2017?

12 A. No.

13 Q. On the issue of a taxation of costs that is referenced in
14 this exhibit, did that occur?

15 A. It did.

16 Q. I want to turn your attention now to February 28th of 2018.
17 Was there a judgment issued that day?

18 A. I believe -- I can -- it was completely misleading, the
19 docket but I believe that that's the date that the costs were
20 taxed and it was a money judgment entered on those costs.

21 Q. I'll show you Government Exhibit 1962 on the docket?

22 MS. GLAVIN: Move for admission.

23 THE COURT: Received.

24 (Government's Exhibit 1962 received in evidence)

25 Q. Ms. Champion, do you recognize that?

L5AAADON4

Champion - Direct

1 A. Yes. This is the supplemental judgment as to Donziger
2 defendants and defendant's Camacho and Piaguaje.

3 Q. If we could go to page two of this judgment. And if you
4 could read what the order states with report to accordingly.

5 A. Accordingly, the judgment is supplemented and that it is
6 hereby further ordered, adjudged and decreed that plaintiff
7 shall recover of the Donziger defendants and the Lap
8 representatives jointly and severally the sum of \$813,602.71.

9 Q. And if I could show you what is Government Exhibit 1963.
10 Do you recognize this exhibit?

11 A. Yes.

12 MS. GLAVIN: If we could go to the -- this is on the
13 docket sheet in the special prosecutors and move for admission.

14 THE COURT: Received.

15 (Government's Exhibit 1963 received in evidence)

16 Q. If we could go to page two of this. And do you recognize
17 what that opinion is in relation to?

18 A. I believe this is an opinion that the Court issued
19 regarding the taxation of costs.

20 Q. And if we could go to ECF page 17 and if you could read the
21 last sentence out loud starting with "moreover".

22 A. Moreover Donziger arguably is in contempt of the final
23 judgment of permanent injunction in this case.

24 Q. And if you could read out loud Footnote Number 59 which
25 comes after that sentence.

L5AAADON4

Champion - Direct

1 A. The judgment directs him to execute in favor of Chevron a
2 stop power transferring to Chevron all of his rights, title and
3 interests of his shares in Amazonia, a Gibraltar company set up
4 to receive any proceeds of the enforcement of the Ecuadorian
5 judgment. According to Chevron's uncontradicted assertion, he
6 has not done so.

7 Q. And, Ms. Champion, the footnote cites to docket entry 1922,
8 if we could pull up 1922 in the detective docket sheets or
9 admission.

10 THE COURT: Received.

11 (Government's Exhibit 1922 received in evidence)

12 Q. What does that refer back to?

13 A. This is Mr. Mastro's June 19, 2017 letter to the Court.

14 Q. Now, after Judge Kaplan issued the judgment of \$813,000
15 against Mr. Donziger, did Mr. Donziger file a notice of appeal
16 of that decision?

17 A. He did.

18 Q. Showing you what is Government Exhibit 1972 which is in the
19 docket sheet.

20 Move for admission?

21 THE COURT: Received.

22 (Government's Exhibit 1972 received in evidence)

23 Q. Is this that notice of appeal from the supplemental
24 judgment?

25 A. Yes.

L5AAADON4

Champion - Direct

1 Q. Did Mr. Donziger ever seek a stay in the Second Circuit of
2 enforcement of that money judgment to your knowledge?

3 A. Before the Second Circuit?

4 Q. Yes.

5 A. No.

6 Q. Did he ever seek a stay in the second circuit of discovery
7 in aid of enforcement of the money judgment?

8 A. No.

9 Q. If I could show you what a Government Exhibit Seven.

10 MS. GLAVIN: Your Honor, this is a certified copy of a
11 docket sheet of Court of Appeals case number 18-85 which could
12 corresponds to the Court of Appeals 1972; move for admission.

13 THE COURT: Received.

14 (Government's Exhibit 1972 received in evidence)

15 Q. Now, Ms. Champion, I want to turn your attention to
16 March 19, of 2019. Did Chevron move for relief in the district
17 court before Judge Kaplan in civil case 11 CV 691?

18 A. Yes, on March 19, 2018 Chevron filed a motion by order to
19 show cause for a preservation order discovery and for contempt.

20 MS. GLAVIN: I show what is Government Exhibit 1965
21 docket entry; move for admission?

22 THE COURT: Received.

23 (Government's Exhibit 1965 received in evidence)

24 Q. Is this the order to show you just referenced?

25 A. Yes.

L5AADON4

Champion - Direct

1 Q. Chevron moved ex parte in this order to show cause and what
2 was the basis presented for moving ex parte?

3 A. I would have to review the memo to remember exactly what it
4 was but because we were asking for a reservation order
5 essentially it was to get a preservation order in place so that
6 documents wouldn't be destroyed.

7 Q. And with respect to you mentioned that the order to show
8 cause was also alleging consent on the RICO judgment, what were
9 the bases of contempt that Chevron was alleging?

10 A. Failure to assign the Amazonia shares to Chevron.

11 Q. And was there anything else with respect to the contempt?

12 A. Yes. A recent solicitation of Elliot Management for
13 funding.

14 Q. And what was the allegation that Chevron was making about
15 that solicitation?

16 A. That it violated the injunction preventing Donziger from
17 monetizing the Ecuadorian judgment.

18 Q. I show you what is Government Exhibit 1966.

19 MS. GLAVIN: We move for admission?

20 THE COURT: Received.

21 (Government's Exhibit 1966 received in evidence)

22 Q. Ms. Champion, is this the brief that Chevron filed in
23 connection with their motion for order to show cause --

24 A. Yes.

25 Q. If we could go to ECF, page five. At the very top where it

L5AAADON4

Champion - Direct

1 says "accordingly", what does that state that Chevron is
2 seeking with respect to discovery?

3 A. Accordingly, Chevron here seeks leave to conduct post
4 judgment discovery of Donziger and those acting in concert with
5 him, as well as issuance of a document preservation order in
6 order to uncover the full extent of Donziger's violations.
7 Donziger's long record of obstruction and concealments.

8 Q. Let me stop you right there. Going to move on to, we go to
9 ECF, page six, footnote one. Could you read out loud what
10 Chevron alleged here in Footnote One in its brief?

11 A. The court's April 25, 2014 order amended the judgment
12 solely pending the determination of the appeal in this case to
13 require Donziger to transfer his Amazonia shares to the clerk
14 of the court. Donziger did not transfer his shares to the
15 clerk of the court as ordered and this amendment has become
16 mute as there was no further right of appeal in this matter.

17 Q. And if you could go to page 16 of ECF. OK. And could you
18 read out loud what Chevron was alleging under point one?

19 A. Donziger had violated the judgment's command that he
20 transfer his Amazonia shares to Chevron, a clear and
21 unambiguous order is one that leaves no uncertainty in the
22 minds of those to whom it is addressed. Here, the judgment is
23 clear and unambiguous in its decree that Donziger shall execute
24 in favor of Chevron a stop power transferring to Chevron all of
25 his rights, title and interests in his shares of Amazonia.

L5AADON4

Champion - Direct

1 Donziger demonstrated his full understanding of this
2 requirement in his emergency motion to stay filed in this court
3 on March 18, 2014 which acknowledged that this court's order
4 would require him to transfer forthwith all of his rights,
5 title and interest in Amazonia Recovery Limited.

6 Q. Then if you could read the second paragraph what Chevron
7 was alleging in this brief and only docket?

8 A. It is beyond dispute that Donziger has not complied with
9 this aspect of the judgment. Donziger has not executed a stock
10 transfer certificate transferring his shares to Chevron. Nor
11 has he transferred any shares of Amazonia to the Clerk of
12 Court. Rather than diligently attempting to comply with the
13 judgment in a reasonable manner, the evidence shows that
14 Donziger has done the opposite. More than four years have
15 elapsed since the entry of the judgment and Donziger has not
16 complied or even attempted to communicate with Chevron about
17 complying with it.

18 Q. If you could turn to ECF page 20. It states here at "C", a
19 preservation order and post judgment discovery are necessary to
20 determine the full extent of Donziger's violations of the
21 judgment and ensure compliance. In light of the already
22 established violations of the judgment and indications that
23 other violations likely exist post judgment discovery is
24 necessary to uncover the full extent of Donziger and his
25 co-conspirators ongoing violation of this Court's orders.

L5AADON4

Champion - Direct

1 And if we could go to page 22 of this ECF brief.

2 Did Chevron indicate that coercive sanctions were
3 appropriate?

4 A. Yes, Chevron argued here coercive sanctions are appropriate
5 to ensure compliance with the judgment. That's a quote.

6 Q. And if we go to page 23. And if you could read the last
7 two sentences before the conclusion.

8 A. Donziger's ongoing refusal to comply with the judgment four
9 years after it was entered warrants imposing coercive
10 sanctions. Chevron will pursue these sanctions as well as any
11 other relief deemed just and proper in the briefing and hearing
12 to determine the extent of Donziger's contempt.

13 Q. Go to the conclusion. And at the end of the brief, what
14 specifically did Chevron request from Judge Kaplan?

15 A. Chevron requests that the court one, grant ex parte and
16 order requiring Donziger, as well as any other person or entity
17 it acting at his direction or in concert with him to preserve
18 and maintain within the U.S. any and all documents or evidence
19 relating to the judgment or compliance there with to authorize
20 Chevron ex parte to serve post judgment discovery requests on
21 Donziger and any other person or entity reasonably calculated
22 to possess information relevance to enforcement of the judgment
23 and three, set a prompt briefing schedule and hearing date to
24 adjudicate Donziger's contempt and determine the appropriate
25 remedy to compel Donziger's compliance with the judgment

L5AAADON4

Champion - Direct

1 following and appropriate period of time for Chevron to conduct
2 the requested discovery.

3 Q. Now, with respect to Chevron's motion made by order to show
4 cause, let me show you Government Exhibit 1968 which is in the
5 docket and we would move for admission?

6 THE COURT: Received.

7 (Government's Exhibit 1968 received in evidence)

8 Q. With respect to 1968, if we could turn to page three --
9 actually, page four, is this Judge Kaplan's order on the order
10 to show cause?

11 A. Yes.

12 Q. With respect to Chevron's request to proceed ex parte, how
13 did you Judge Kaplan rule? You want it to go to the page
14 before. Did Judge Kaplan order at the top that Chevron serve
15 on Mr. Donziger the order to show cause on all papers by the
16 next day?

17 A. Yes.

18 Q. And did Chevron do that?

19 A. Yes.

20 Q. Going to the last page Judge Kaplan's order March 19, 2018
21 with respect to point one the attached order grants in somewhat
22 modified form is so much of the application that seeks
23 preservation order.

24 Did you understand that mean to Judge Kaplan was
25 directing preservation of documents?

L5AADON4

Champion - Direct

1 A. Correct, as set forth in the ordinary to show cause as
2 modified by him.

3 Q. With respect to point two in Judge Kaplan's order, Judge
4 Kaplan notes that the Court has stricken out the language that
5 it signed would have authorized post judgment discovery for the
6 purpose of enforcing the judgment but solely on the grounds
7 that it is superfluous in part. In other words, that the Court
8 will grant ex parte on the front showing. If you turn to
9 paragraph 2.1 of Judge Kaplan's order, what did Judge Kaplan
10 find here at 2.1?

11 A. He notes that insofar as the judgment is for the payment of
12 money, enforcements proceedings and governed by Federal Rule of
13 Civil Procedure 69A. That rule provides in relevant part and
14 in substance that the procedural applicable to enforcement of a
15 money judgment rendered by a federal court is governed by
16 procedure of the state where the court is located except where
17 a federal statute otherwise provides.

18 Thus, proceedings to enforce a money judgment of this
19 court generally are governed by the New York CPLR.

20 Q. If you could just read then the last line by Judge Kaplan
21 under 2.1?

22 A. Accordingly, to the extent the discovery is sought in aid
23 of enforcement of the monetary portion of the judgment leave of
24 court is not required.

25 Q. What did you understand Judge Kaplan to mean in stating

L5AAADON4

Champion - Direct

1 that?

2 A. That we had a judgment that had injunctive relief and we
3 have a monetary judgment due to the taxation of costs and to
4 the extent discovery was sought in aid of enforcing the money
5 judgment leave of court was not required for that discovery.

6 Q. And with respect to paragraph 2.3 it states:

7 Judge Kaplan states in one respect Chevron's current
8 motion is for contempt of a portion of the judgment that
9 directed the performance of a specific act. In another it
10 contends that Donziger has violated a prohibitory portion of
11 the judgment by virtue of its approach to one possible investor
12 and it seeks discovery in part to prove up those contentions
13 and in part to obtain evidence of any other such alleged
14 violations.

15 Continuing to 2.4 in all the circumstances the Court
16 concludes that there is no need for determination with respect
17 to discovery with respect to enforcement of the non monetary
18 portion of the judgments that is so immediate that Donziger
19 should not be afforded an opportunity to respond to so much the
20 application as seeks discovery with respect to the alleged
21 impossible contempts.

22 Now, Ms. Champion, after Chevron filed this motion,
23 OK, seeking to hold Mr. Donziger in contempt for failure to
24 execute the stock power and to address contempt with Elliot
25 Management was there litigation on their -- withdrawn.

L5AAADON4

Champion - Direct

1 After this motion was filed by March 19, 2018, was
2 there litigation regarding Chevron's motion seeking to hold
3 Mr. Donziger in contempt for failure to execute his stock power
4 in favor of Chevron from Amazonia shares?

5 A. Yes.

6 Q. And after Chevron filed this motion, was there also
7 litigation regarding the discovery sought by the motion?

8 A. Yes.

9 Q. So, for purposes of your direct-examination I want to
10 separate out those two topics, OK, and I want to focus first on
11 the litigation seeking to hold Mr. Donziger in contempt as it
12 relates to the failure to execute a stock power in favor of
13 Chevron or Amazonia shares, OK, and then --

14 MR. KUBY: I just again want to note that Mr. Donziger
15 is not charged with contempt with respect to Amazonia shares,
16 nor is he charged with contempt for failure to abide by the
17 money judgment. It's 2:49 in the afternoon and we've yet to
18 get to what he is charged with. Just noting it for the record.

19 THE COURT: Thank you, Mr. Kuby.

20 BY MS. GLAVIN:

21 Q. OK. Ms. Champion, focusing now on the post judgment
22 proceedings with respect to Amazonia. Did Mr. Donziger oppose
23 the motion to hold him in contempt for failure to transfer the
24 Amazonia shares to Chevron?

25 A. He did.

L5AADON4

Champion - Direct

1 Q. I am going to show you what is Government Exhibit 1986. It
2 is also on the docket sheet.

3 Move for admission?

4 THE COURT: Received.

5 (Government's Exhibit 1986 received in evidence)

6 Q. With respect to page one and incidentally, if we could go
7 to the last page and who signed this?

8 A. Mr. Donziger.

9 Q. Himself?

10 A. Yes.

11 Q. With respect to the post judgment proceedings in the time
12 period of February 28 of 2018 through July 31st of 2019, did
13 Mr. Donziger have a lawyer of record for the proceedings during
14 that period?

15 A. Can you give me the dates again?

16 Q. Yes. February 18th of 2018, the day of the supplemental
17 judgment to July 31st of 2019?

18 A. I do not believe so. I do recall that Mr. Frisch appeared
19 at one civil proceeding in front of Magistrate Lehrburger but I
20 don't remember the date or whether it was within that range.

21 THE COURT: F-R-I-S-C-H.

22 Q. This indicates that Mr. Donziger is representing himself
23 per se; is that correct?

24 A. Yes.

25 Q. If we could go back to the first page of Mr. Donziger's

L5AAADON4

Champion - Direct

1 opposition?

2 A. Mr. Donziger states with respect to the Amazonia shares it
3 is the understanding of the undersigned that the Amazonia
4 entity in Gibraltar either no longer exists or is entirely
5 owned by Chevron after Chevron forced into receivership as part
6 of its -- of global collateral obliteration in or around 2014.
7 To the best of undersigned's knowledge the entity of public
8 interest vehicle as explained below never received sufficient
9 funds due to Chevron's litigation assault and thus, was
10 considered irrelevant and ignored by the plaintiffs for years.
11 Undersigned is uncertain whether Amazonia still exists and if
12 so, in what status, what for?

13 If we could read the first sentence of Footnote One.
14 Assuming the entity or any part of it has been taken over by
15 Chevron it is now in undersign's view, null and void.

16 Turn to page two of Mr. Donziger's submission. Go
17 back to page one at the bottom.

18 OK. If you could read out loud, Ms. Champion, the
19 sentence starting with "in 2014" and continue to the end of
20 that paragraph.

21 A. In 2014 undersigned contacted Chevron seeking in common
22 sense resolution to the relevant parts of the court's 2014
23 judgment. In an obvious sign of bad faith, Chevron never
24 responded to this letter and failed to include it in among its
25 multitude of exhibits offered in support of its contempt

L5AADON4

Champion - Direct

1 application.

2 Indeed, before filing its contempt application,
3 Chevron never even contacted the undersigned to clearly state
4 what it needed in regards to these imagined shares.

5 Q. And Footnote Two to that sentence if you could read aloud
6 what Mr. Donziger stated in Footnote Two?

7 A. Chevron asserts as relevant that it requested that the
8 court ordered Donziger to comply forthwith with the share
9 transfer request and that Donziger did not respond to that
10 request. But of course Chevron's letter was to the courts not
11 to undersigned and Chevron puts a lot of nonsense in its
12 various letters and motions.

13 Keep going?

14 Chevron fails to note that the Court did not respond
15 or otherwise appear to take any note of the mention of the
16 share requests. To the extent undersigned was aware of the
17 issue, undersigned presumed that the court, like undersigned,
18 considers the whole issue obsolete and pointless given that
19 Chevron now seems to hold all shares in Amazonia.

20 Q. I show you there was a reference to Exhibits One in
21 Mr. Donziger's opposition at 1986. I show you what is 1986-1
22 in the docket.

23 Move for admission.

24 THE COURT: Received.

25 (Government's Exhibit 1986 received in evidence)

L5AAADON4

Champion - Direct

1 Q. Is this the letter Mr. Donziger attached to his opposition
2 papers?

3 A. Yes.

4 Q. And the date of this letter?

5 A. August 21, 2014.

6 Q. And Ms. Champion, in or about that date August 21, 2014,
7 would you have seen this letter?

8 A. Yes.

9 Q. Then if you could read the first, the letters addressed to
10 who?

11 A. To Mr. Mastro.

12 Q. And it's from who?

13 A. Mr. Donziger.

14 Q. And if you could read the first three paragraphs of
15 Mr. Donziger's letter from August 21, 2014?

16 A. I write in response to your letter of August 7, 2014 in
17 which you raised for the first time the issue of what you
18 describe as long overdue compliance with the district court's
19 judgment in this matter. To be clear, I have not and will not
20 sell or otherwise transfer any of my shares in Amazonia
21 consistent with the district court's judgment unless and until
22 that judgment is modified by the district court or reversed or
23 stayed by the U.S. Court of Appeals for the Second Circuit.
24 And despite your reference to long overdue compliance, the
25 reality is that nearly a full six months have passed since the

L5AAADON4

Champion - Direct

1 district court's original judgment and Chevron has said nothing
2 about the matter until now. The district court's original
3 judgment directed me to execute in favor of Chevron a stock
4 power and such other and further documents that Chevron
5 reasonably may request or as the court hereafter may order.
6 The onus was thus on Chevron to propose and request the form of
7 the stock power and any other transactional documents deemed
8 necessary to ensure compliance.

9 Chevron never did so. Indeed, Chevron never
10 communicated with me or my counsel about compliance in any
11 respect until now.

12 Q. Go to the next page. If you could read out loud what
13 Mr. Donziger stated in the paragraph "I must also advise you".

14 A. I must also advise you of an important new development that
15 has arisen since the district court issued its judgment that
16 affects the issues outlined in your correspondence. My clients
17 have informed me via the directors of Amazonia that if any
18 transfer of stock is effectuated by me to any entity, those
19 shares will be divested immediately under the by-laws of the
20 entity that holds the shares. As you know, my clients do not
21 recognize Judge Kaplan's assertion of jurisdiction in this
22 matter. The upshot is that a simple transfer to the clerk's
23 office of my Amazonia shares would in practice mean the
24 complete vestiture and potentially irretrievable loss of more
25 than two decades of labor on the part of me and some of my

L5AAADON4

Champion - Direct

1 colleagues before the Second Circuit even has a chance to
2 decide or appeal from Judge Kaplan's judgment.

3 Q. In Mr. Donziger's opposition papers Government Exhibit 1986
4 which were filed on April 24 of 2018, did Mr. Donziger dispute
5 he had not executed a stock power in favor of Chevron for the
6 clerk of the court?

7 A. Yes.

8 Q. Did he dispute it?

9 A. Oh, he did not dispute it. I'm sorry. He stated that he
10 had not and would not.

11 Q. I want to turn your attention to May 8 of 2018. Did you
12 appear in court that day?

13 || A. I did.

14 Q. Did Mr. Donziger appear in court that day?

15 A. Yes.

16 || Q. In this courthouse?

17 A. Yes.

18 Q. I am going to show you what Government Exhibit number 2010
19 which is on the docket sheet and move for admission?

20 THE COURT: Received.

21 (Government's Exhibit 2010 received in evidence)

22 Q. OK. Do you recognize this?

23 A. I do. This is a transcript of the May 8th hearing.

24 Q. You were present for that hearing?

25 A. Yes.

L5AAADON4

Champion - Direct

1 Q. You had an opportunities to review this before today?

2 A. Yes.

3 Q. And at this hearing did Mr. Donziger address Chevron's
4 contempt motion or failure to transfer his Amazonia shares?

5 A. Yes, he did.

6 Q. And if we could go to page 27 of this transcript starting
7 at line 12. And we're going to continue to page 30, line five.
8 If you could read the portion of Mr. Donziger's statements and
9 I'll read the portion of "The Court" and "Mr. Mastro" starting
10 at line 12.

11 A. Go ahead.

12 "They sued Amazonia in Gibraltar as I understand it.
13 And the people who run Amazonia there's a board of directors.
14 There was an initial attempt to defend and ultimately they just
15 gave up for whatever reason lack of resources. And they got a
16 default judgment against Amazonia and then the entity as I
17 understand it was put into liquidation. When I filed my
18 opposition to the contempt motion I mentioned that I wasn't
19 sure of the status of it because they have never disclosed the
20 status of it. And I assumed Mr. Mastro had three banker boxes
21 of stuff from that case delivered to my apartment by nine a.m.
22 the next morning. So, somewhere in this massive amount of
23 material I assume is the answer to that question. But I don't
24 think we should play possum here. I think you should ask the
25 Chevron lawyers do they own my shares because I don't as far as

L5AADON4

Champion - Direct

1 I know have a document that has shares on it. However, I will
2 be more than happy to do whatever the court instructs because I
3 think this is a completely ridiculous issue."

4 Q. "I instructed in 2014. We are all waiting."

5 A. "Why didn't they pursue it for four years".

6 Q. "The Court: I asked a question. That's neither here nor
7 there."

8 A. "Just so you know."

9 Q. "The Court: Your a lawyer who says he complies with court
10 orders. There is a court order outstanding since 2014 that
11 compels you to deliver an executed stock power. I am told this
12 never happened. You did not deny that."

13 A. "Well, that's not the end of the story sir, OK? In 2014
14 this was the problem in 2014. I sent them a letter saying I
15 would be more than happy to negotiate something that could work
16 for both of us."

17 (Continued on next page)

18

19

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25

L5AVDON3

Champion - direct

1 BY MS. GLAVIN:

2 (Reading)

3 "The Court: I read the letter, Mr. Donziger.

4 "The Defendant: Okay. They never responded.

5 "The Court: So what?

6 "The Defendant: I acted in good faith.

7 "The Court: So what?

8 The Defendant: So why are they here now four years
9 later, because we're winning in Canada?10 "The Court: They won. They got a judgment. You made
11 them an offer. They blew it off. Not the first time in legal
12 history, not the last.13 "The Defendant: Well, I'm representing to you today
14 that I do not believe I have violated the order. I have looked
15 for a way to do it, because had I done that, there would have
16 been all sorts of other problems with divestment, had I won the
17 case on appeal, number one; number two, I ran into problems
18 with my clients because I was not allowed to transfer shares
19 absent an agreement by the board of directors in Amazonia.20 "But I will say this: It doesn't matter, because they
21 own it, okay? This is a fake issue. And if they want me to
22 sign my shares over, which they already have, because this
23 would be a public relations exercise for them, I'm happy to do
24 it. I'm not going to sit here and be held in contempt over
25 something that's completely meaningless, when I'm here today

L5AVDON3

Champion - direct

1 ready to do that.

2 "So tell me what you want me to do. He says he has
3 something for me to sign. Well, why hasn't he presented that
4 to me? Where is it? I'm sitting here. He sent me an email
5 this morning looking for discovery. Why is he playing possum
6 with me, to make me look foolish? Just give me the document
7 you want me to sign. Do you have it, sir? I mean, come on.

8 "Mr. Mastro: I do have an assignment here, and I
9 asked you to bring the shares to court today.

10 "The Defendant: I don't have the shares, sir. I told
11 you that. And beyond that, excuse me, they filed a motion to
12 compel discovery."

13 MS. GLAVIN: Moving to page 36 of this transcript, we
14 could start and read out loud lines 14 to line 22.

15 "The Court: Do you have the stock power you want him
16 to sign?

17 "Your Honor, we do have a share transfer form and
18 assignment ready to present to Mr. Donziger right now.

19 "The Court: Well, you can give it to him. I'm not
20 going to insist that he sign it; he is a free actor. Your
21 motion is outstanding. I imagine I'll rule on it soon, and you
22 can let me know, both of you, whether it's, in that regard,
23 moot."

24 MS. GLAVIN: We can go to page 37, at lines 5 to 6.

25 "Mr. Mastro: Let the record reflect that I just

L5AVDON3

Champion - direct

1 handed Mr. Donziger the two forms that are share transfer forms
2 related to Amazonia."

3 BY MS. GLAVIN:

4 Q. Ms. Champion, after this May 8th hearing, did you follow up
5 with Mr. Donziger about signing a stock transfer form?

6 A. I did.

7 Q. Showing you what is Government Exhibit No. 114, do you
8 recognize this?

9 A. Yes. This is an email that I sent to Mr. Donziger on
10 May -- it's actually sent on May 8th, even though the date at
11 the top is May 9th. There's some weird thing that happens when
12 you produce these emails where it goes to UTC time, whatever
13 that is; but it's four or five hours later than New York time.

14 So this actually was sent on the evening of May 8th.

15 And in this email I state to Mr. Donziger:

16 In accordance with your representations to the Court
17 today, attached for your execution please find forms
18 transferring your shares in Amazonia, hard copies of which we
19 provided to you in court today, and your interest in the
20 Ecuadorian judgment pursuant to paragraphs 1 and 3 in the
21 judgment. We request that you execute these forms within the
22 next 24 hours.

23 Q. And Ms. Champion, if you could go to the first -- or the
24 share transfer forms, the three forms attached to your email.

25 A. Yes.

L5AVDON3

Champion - direct

1 Q. Or not the three share transfer forms, the three assignment
2 forms.

3 A. Exactly. Two share transfer forms, one general assignment.

4 Q. Okay. With respect to what is Bates Donziger 104210, what
5 is this, a share transfer form?

6 A. This is a share transfer form for the FDA's shares in
7 Amazonia.

8 Q. Is that the Class C participation shares?

9 A. Yes.

10 Q. If you could go to the next page, this is Bates Donziger
11 104211. What is this share transfer form?

12 A. This is a share transfer form for Donziger & Associates
13 PLLCs, what we understood to be its shares in Amazonia.

14 Q. And are those Class B1 participation shares?

15 A. Yes.

16 Q. And if you could go to the third form, and this is Bates
17 number Donziger 104212, what is this transfer in assignment of
18 judgment interests?

19 A. So as you can see from the first paragraph, it states:
20 This assignment of judgment interest, this agreement is made
21 effective as of blank 2018, by and amongst Steven Donziger, the
22 Law Offices of Steven R. Donziger, and Donziger & Associates
23 PLLC, on the one hand; and Chevron Corporation on the other
24 hand.

25 So it's a transfer and assignment of judgment interest

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1 from Donziger and his law firms to Chevron, which specifically
2 references the Court's order requiring him to transfer such
3 interest to Chevron.

4 Q. And if you could go to the third paragraph, where it says:
5 On April 3rd of 2014, the U.S. District Court entered an order
6 requiring signer to transfer and assign to assignee all
7 property --

8 THE COURT: Slowly.

9 Use your on-the-record voice.

10 MS. GLAVIN: Sorry.

11 Q. Ms. Champion, there's a date here in the third paragraph,
12 whereas on April 3rd, 2014. Is that date incorrect?

13 A. I think so, yes. It should be March 4th.

14 Q. And March 4th was when?

15 A. That's the date the RICO judgment was entered.

16 Q. And what was -- let me read this.

17 States: Whereas, on April 3rd, 2014, the United
18 States District Court for the Southern District of New York
19 entered an order requiring assignor to transfer and assign to
20 assignee all property, whether personal or real, tangible or
21 intangible, vested or contingent, that assignor has received or
22 hereafter may receive, directly or indirectly, or to which
23 assignor now has or hereafter obtains any right, title, or
24 interest, directly or indirectly, that is traceable to the
25 judgment or the enforcement of the judgment anywhere in the

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1 world, including, without limitation, all stock in Amazonia
2 Recovery Limited, and all rights to any contingent fee under
3 that certain retainer agreement dated as of January 5th, 2011,
4 between and among each of the individual plaintiffs in the *Lago*
5 *Agrio* case, Frente de Defensa de la Amazonia; C Asamblea de
6 afectados por Texaco; and D, Donziger Associates PLLC, together
7 with its successors and assigns and all successors to and
8 predecessors of the retainer agreement, collectively the
9 judgment interest.

10 And if you could go to the next page or go back to the
11 page. What assignment was Chevron seeking in this document?

12 A. As stated in the paragraph that you just read, all
13 property, whether personal or real, tangible or intangible,
14 etc., traceable to the judgment, including Mr. Donziger's
15 contingency fee under his 2011 retainer agreement and the
16 shares of Amazonia.

17 Q. Now, after you sent this email to Mr. Donziger with those
18 three forms, did Mr. Donziger execute any of those three forms?

19 A. Not immediately, no. He did ultimately execute the
20 transfer form of his shares of Amazonia, but with an addendum.

21 Q. So he didn't execute the transfer and assignment form for
22 all of his property interest traceable to the judgment?

23 A. No.

24 Q. I'm going to show you what is Government Exhibit 2000 --
25 one moment.

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1 MS. GLAVIN: Oh, your Honor, move for admission of
2 Government Exhibit 114, the email with attachments.

3 THE COURT: Any objection, sir? Yes, sir.

4 MR. KUBY: All good.

5 THE COURT: Yes, sir. Received.

6 (Government's Exhibit 114 received in evidence)

7 Q. Ms. Champion, if we could go to Government Exhibit 2003-3,
8 which is on the docket.

9 MS. GLAVIN: We move for admission.

10 THE COURT: Received.

11 (Government's Exhibit 2003-3 received in evidence)

12 MS. GLAVIN: If we could go to page 2.

13 Q. Ms. Champion, what is this form on page 2?

14 A. Well, this is a modified version of the share transfer form
15 that we had sent him. He added, you know, a reference to the
16 accompanying addendum of understandings, which was shown on the
17 prior page.

18 Q. So he signed the share transfer form for his class, the
19 Class B1 shares in Amazonia?

20 A. Yes.

21 Q. Okay. And on the second paragraph in bold, "hereby with
22 this form and accompanying addendum of understandings, transfer
23 to Chevron," is that the language he added?

24 A. Yes, I believe so. I mean, there may be other stuff, but
25 that's what jumps out at me.

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1 Q. Okay. And if you could go to the first page, the addendum
2 of understandings.

3 A. Yes. So this, Mr. Donziger added this and they arrived
4 together as one document.

5 Q. And if you could read the first paragraph of this addendum
6 that Mr. Donziger added.

7 A. This share transfer form is being executed pursuant to an
8 express order of judgment of the U.S. District Court for the
9 Southern District of New York in *Chevron Corp. v. Donziger* --
10 pardon me, in *The Chevron Corp. v. Donziger* civil RICO case,
11 case number 1:11-CV-0691, docket 1875, Kaplan J. And
12 furthermore, upon the specific threat of imposition of contempt
13 of court sanctions if transferor fails to execute this form.

14 Q. If you go to paragraph 2 on the addendum Mr. Donziger
15 added, read that out loud.

16 A. Chevron Corp. has previously represented to transferor that
17 the Amazonia Recovery Limited entity has been placed into
18 liquidation in Gibraltar after the entity failed to participate
19 in the Gibraltar, and subsequently failed to pay a default
20 judgment entered by the Gibraltar court against it.

21 Q. And if you go to paragraph 3.

22 A. Transferor acknowledges that this form is being executed
23 notwithstanding the terms and restrictions of paragraphs 37 to
24 38 of the articles of association of Amazonia Recovery Limited,
25 which provide *inter alia* that no transfer of any shares shall

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1 be made or registered without the prior written consent of a
2 majority of the directors, each acting in his or her absolute
3 discretion; and that any purported transfer in violation of
4 these articles shall be null and void.

5 Q. And if you go to paragraph 4.

6 A. Transferor continues to take the position, which has been
7 communicated in writing to Chevron Corp. and to the U.S.
8 District Court, that the Amazonia Recovery Limited entity is
9 null and void for several reasons, including the fact that it
10 has been taken over and is now being manipulated by an adverse
11 party to serve purposes frustration of prompt relief to the
12 affected peoples of Ecuador that are wholly contrary and
13 opposite to the entity's fundamental purposes, as expressed in
14 its memorandum of association and other foundational documents.

15 Q. Ms. Champion, did Mr. Donziger ever indicate to you or in a
16 court filing that he had made any effort to get written consent
17 of a majority of the directors of Amazonia Recovery Limited to
18 make transfer?

19 A. No.

20 Q. Following Mr. Donziger's delivery of the share transfer
21 form with his addendum of understandings, did Chevron file a
22 letter with Judge Kaplan?

23 A. Yes.

24 Q. I'm going to show you what is Government Exhibit 2003,
25 which is on the docket sheet, and move into evidence.

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1 THE COURT: Received.

2 (Government's Exhibit 2003 received in evidence)

3 Q. What was the position that Chevron took with respect to
4 Mr. Donziger's signing the share transfer form, along with the
5 addendum of understandings?

6 A. If you look at the third paragraph of the letter, you'll
7 see that it states: The addendum of understandings that
8 Donziger drafted and attached to the share transfer form
9 effectively nullifies the transfer of his shares in Amazonia
10 and establishes his contempt in multiple ways.

11 Q. And if you go to the next page of the letter, if you could
12 read starting at -- on the paragraph starting with "By his own
13 admissions in the addendum."

14 A. By his own admissions in the addendum then, Donziger is
15 expressly continuing to refuse to transfer or forthwith assign
16 to Chevron all property, whether personal or real, tangible or
17 intangible, vested or contingent, that Donziger has received or
18 hereafter may receive, directly or indirectly, or that he now
19 has or hereafter obtains, directly or indirectly, that is
20 traceable to the judgment or enforceable to the judgment as
21 required by the RICO judgment.

22 Keep going?

23 Q. Yes.

24 A. After Donziger testified during trial that his interest in
25 the judgment was held as shares of Amazonia, this Court ordered

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1 him to assign those shares and, thus, his interest in the
2 judgment to Chevron. Yet Donziger has once again refused to
3 effectuate the transfers of his shares in Amazonia by modifying
4 the form presented to him by adding language that seeks to
5 nullify the transfer.

6 Donziger now contends that Amazonia is irrelevant, a
7 fake issue, and completely meaningless, and fails to specify in
8 what form he holds his contingency interest in the Ecuadorian
9 judgment. Following his statements in this regard at the
10 contempt hearing, Chevron provided Donziger with a general
11 assignment for any interest he has in the judgment, however
12 held, which provided, in pertinent part, that Donziger does
13 hereby irrevocably assign, send over, and transfer to assignee
14 any and all judgment interest, the judgment interest defined in
15 accordance with paragraph 1 of the RICO judgment. Donziger
16 refused to execute the general assignment.

17 Q. And if you could turn to the bottom and read the last
18 paragraph.

19 A. There can thus be no doubt that Donziger has not complied
20 with the Court's judgment to transfer and forthwith assign to
21 Chevron all property, whether personal or real, tangible or
22 intangible, vested or contingent, that Donziger has received or
23 hereafter may receive, directly or indirectly, or that he now
24 has or hereafter obtains, directly or indirectly, that is
25 traceable to the Ecuadorian judgment or the enforcement of the

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1 Ecuadorian judgment, including all of his rights, title, and
2 interest in his shares of Amazonia.

3 Such interest includes not just the 6.3 percent
4 contingency interest he asserted ownership of to Elliot, but
5 any retainer payments or other fees paid to Donziger since the
6 entry of the RICO judgment whose source is traceable to the
7 fraudulent Ecuadorian judgment, including funds provided by
8 investors in exchange for an interest in that judgment.

9 Q. Now, Ms. Champion, with respect to Chevron's pending motion
10 to hold Mr. Donziger in contempt for failure to transfer his
11 Amazonia shares to Chevron, did Judge Kaplan issue a decision?

12 A. He did, yes.

13 Q. Let me show you what's Government Exhibit 2006; it's on the
14 docket and move for admission.

15 THE COURT: Received.

16 (Government's Exhibit 2006 received in evidence)

17 Q. Is this that decision? You can go to the next page.

18 A. Yes.

19 Q. Go to ECF page 6. Read what Judge Kaplan wrote beginning
20 with "First."

21 A. First, he says that he wrote Chevron a letter seeking what
22 Donziger calls a common sense resolution of that part of the
23 injunction, and that Chevron never responded. But the
24 injunction was a judgment of this Court that Chevron obtained
25 after trial and that now has been affirmed on appeal. It had

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1 no obligation to parlay with Donziger about its terms and was
2 fully entitled to stand on its rights. No attempt to work out
3 some alternate arrangement -- let alone an attempt spurned by
4 the adversary -- altered Donziger's obligation to comply with
5 this Court's judgment.

6 Q. Continue reading to paragraph 2 of Judge Kaplan's opinion.

7 A. Second, Donziger asserted -- albeit not under oath -- that
8 he is uncertain whether Amazonia still exists and in what form.
9 But it is impossible to see what difference that would make,
10 even if one were to credit Donziger's entirely unsubstantiated
11 speculation.

12 He is obliged to convey all of his right, title, and
13 interest in the shares, whatever that right, title, and
14 interest may be, and regardless of whether it has any economic
15 value. If the company no longer exists, then the conveyance by
16 Donziger of all of his right, title, and interest in the
17 shares -- "in shares," sorry, not "in the shares," perhaps
18 would be of no practical significance, but that is not for
19 Donziger to decide and it does not appear to be the case.

20 Chevron asserts that Amazonia and its share capital
21 remain very much in existence. "Donziger is wrong that
22 Amazonia is defunct. Chevron sued Amazonia in Gibraltar for
23 fraud relating to the pursuit of the *Lago Agrio* litigation and
24 resulting judgments. After filing a defense, Amazonia failed
25 to participate in the Gibraltar proceedings and defaulted.

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1 "On December 9th, 2015, Chevron obtained judgment
2 against Amazonia for damages of approximately 28 million in
3 equitable relief. Amazonia failed to pay this judgment debt,
4 and the Gibraltar court granted Chevron's application on July
5 11th, 2016, placing Amazonia into liquidation. But as a matter
6 of Gibraltar/English law, Amazonia still exists, as does its
7 issued share capital."

8 Finally, Donziger contended that the onus was on
9 Chevron to propose a form of stock power, and that it had not
10 done so. But he was wrong. Paragraph 3 of the judgment
11 unambiguously required Donziger to execute and deliver the
12 stock power. It did not require Chevron to do anything at all.

13 Moreover, Donziger made abundantly clear to Chevron in
14 his August 2014 letter that he would not comply with paragraph
15 3 of the judgment, and he made his reason very clear: "My
16 clients have informed me via the directors of Amazonia that if
17 any transfer of stock is effectuated by me to any entity, those
18 shares will be divested immediately under the bylaws of the
19 entity that holds the shares. The upshot is that a simple
20 transfer of my Amazonia shares would, in practice, mean the
21 complete divestiture and potentially irretrievable loss of more
22 than two decades of labor on the part of me and some of my
23 colleagues."

24 In other words, it appears that Amazonia, whether it
25 is in liquidation or not, still exists. Donziger shares are

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1 the vehicles through which he seeks to be compensated in the
2 millions or hundreds of millions of dollars in the event that
3 the Ecuadorian judgment ever is enforced anywhere or the matter
4 is settled.

5 He refused to part with his shares, the judgment of
6 this Court notwithstanding, because he believes that doing so
7 would mean the complete divestiture and potentially
8 irretrievable loss of the massive contingent fee he hopes to
9 collect. The fact, however, is that the judgment in this case
10 forbids him from benefiting in any way from the Ecuadorian
11 judgment that he obtained by fraud.

12 His surrender of his right, title, and interest in the
13 Amazonia shares is but one of several specific means by which
14 the judgment seeks to ensure that result. Donziger simply may
15 not defy this Court's judgment, affirmed by the Court of
16 Appeals, by holding on to the Amazonia shares in the hope --
17 however faint -- of a rich payday down the road.

18 Q. You could turn to page 13, ECF page 13, and read what Judge
19 Kaplan stated in these two paragraphs.

20 A. Paragraph 3 of the judgment required him to execute a stock
21 power. It did not prescribe a particular form. He now has
22 executed a purported stock power, albeit in a form to which
23 Chevron understandably objects. In consequence, although there
24 is no doubt whatever that Donziger was in contempt of paragraph
25 3 from the date the judgment was entered, on March 3rd --

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1 sorry, March 4th, 2014, until May 9th, 2018, the date on which
2 he executed the form with the addendum, at this moment he
3 arguably no longer is in civil contempt based on the failure to
4 comply with paragraph 3 because he ultimately signed a stock
5 power.

6 As the purpose of civil contempt is to coerce
7 compliance with a judgment or order, imposition of civil
8 contempt sanctions on the basis of the complete and absolute
9 failure to comply with paragraph 3 from March 4th, 2014, until
10 May 9th, 2018, would be inappropriate.

11 Q. You can continue to the next paragraph.

12 A. That, of course, is not to say that Chevron is without
13 recourse. It is free to request that Donziger execute a
14 specific form of stock power without amendment or qualification
15 and, should he fail to promptly do so, to seek an order of this
16 Court requiring that he comply. Any failure to comply with any
17 such order would be an appropriate subject of a new civil
18 contempt motion.

19 Q. You could turn to ECF page 14 of the opinion. It's Section
20 5, where it says "Judge Kaplan states additional contempt
21 claim." Could you read that section?

22 A. In a letter dated May 11th, 2018, prompted in part by
23 Donziger's actions with respect to the required transfer of his
24 Amazonia shares, Chevron asserts that Donziger is in contempt
25 also of paragraph 1 of the judgment, which requires him to

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1 transfer and assign to Chevron all right, title, and interest
2 that he now or hereafter obtains that is traceable to the
3 Ecuadorian judgment, including, without limitation, all rights
4 to any contingent fee under his retainer agreement.

5 The claim that Donziger is in contempt of paragraph 1
6 of the judgment was not made in the motion that now is before
7 the Court. The Court, therefore, will not address it unless
8 and until Chevron files an appropriate motion.

9 Q. Now, Ms. Champion, after Judge Kaplan --

10 THE COURT: May I interrupt you?

11 Is this a convenient time for a five-minute break?

12 MS. GLAVIN: Yes, your Honor.

13 THE COURT: Thank you.

14 (Recess)

15 THE COURT: Ms. Glavin.

16 BY MS. GLAVIN:

17 Q. Ms. Champion, before the break, we had just finished
18 discussing Judge Kaplan's May 16, 2018 opinion and order,
19 Government Exhibit 2006.

20 And after Judge Kaplan issued that opinion, that May
21 16th opinion, did Mr. Donziger execute an assignment to Chevron
22 of his right to the contingent fee as granted in the 2011
23 retainer agreement?

24 A. Not immediately, no.

25 Q. And in the next four or five weeks after that opinion, did

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1 he execute an assignment of his contingent fee interest?

2 A. No.

3 Q. I'm going to show you what is Government Exhibit 2035-1,
4 which is on the docket.

5 MS. GLAVIN: Move for admission.

6 THE COURT: Received.

7 (Government's Exhibit 2035-1 received in evidence)

8 Q. If we could start at the -- let's start at the bottom of
9 the exhibit. This is an email at the very bottom, on June 16,
10 2018, 12:02 a.m., from Alejandro Herrera to Mr. Donziger, in
11 which you are cc'd.

12 Who is Alejandro Herrera?

13 A. He was an associate at Gibson Dunn at this time.

14 Q. My bad. He writes: Steven, I'm writing to confirm that we
15 have received your package. Please also see the attached.

16 We could go to the attachment. Letter dated June 18,
17 2018. And Mr. Herrera -- well, he sends a letter from Randy
18 Mastro to Mr. Donziger. And it states: Dear Steven, the Court
19 has adjudicated you to be in civil contempt based on your
20 failure to transfer the Amazonia shares. The Court also ruled
21 that your attempt to undermine the effectiveness of Chevron's
22 prior attempt to complete that transfer through your attachment
23 of an addendum was improper.

24 Accordingly, pursuant to the judgment which provides,
25 in pertinent part, "Donziger shall execute in favor of Chevron

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1 a stock power, transferring to Chevron --

2 THE COURT: Slowly.

3 Q. -- to Chevron all of his right, title, and interest in his
4 shares in Amazonia."

5 We request that you execute the attached transfer
6 document for the Amazonia shares without any alteration or
7 addition, and return the original to us on or before June 19th.
8 We will provide you with a copy of the finalized form. Should
9 you refuse to do so, we will have no choice but to pursue
10 additional contempt relief against you.

11 And if you could go to the attached form.

12 Ms. Champion, is this the same share transfer form for
13 Mr. Donziger's shares in Amazonia Recovery Limited that had
14 previously been provided to Mr. Donziger, but for which he
15 issued his addendum?

16 A. I think in substance it's the same. I think there's a
17 minor change in that it specifies Chevron Corporation as the
18 transferee. I think maybe that had been blank in the last
19 version. But yes, it's substantially similar.

20 Q. And if we can go back to the email exchange.

21 So you write to Mr. Donziger on Friday, June 22nd of
22 2018, Ms. Champion, at 6:52 p.m., you write: Steven, in view
23 of your failure to execute these assignment forms by the date
24 we requested, please provide them by Monday morning or we
25 intend to seek relief from the Court.

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If we go to the next email in the chain from Mr. Donziger to you, Ms. Champion, June 22nd of 2018, 7:18 p.m. Anne, regarding the share transfer form, I executed a form that Chevron provided to me. I did not restrict, reserve, or withhold any part of the transfer. I simply stated certain truths about the underlying context that you would naturally prefer remain hidden.

Your attempt to get me to re-execute the form without an accompanying statement of my understanding of the content -- of the context is deeply repugnant to the First Amendment, as you are essentially seeking a gag order that, if allowed, would just as easily prevent me from declaring my understanding regarding the document to the press or to my colleagues. So I respectfully decline your request.

As regards to the deposition, I propose we commence at 10 a.m. Please indicate where the deposition is taking place.

When Mr. Donziger referred to the deposition, what was he referring to?

A. I believe he was referring to the deposition of himself that took place on June 25th, 2018, so a few days later.

Q. Okay. I want to turn your attention to June 25th of 2018 in that deposition.

Did you attend Mr. Donziger's deposition that day?

A. I did.

Q. And at that deposition of Mr. Donziger, did the issue of

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1 Mr. Donziger assigning his interest in the Ecuadorian judgment
2 to Chevron come up?

3 A. Yes.

4 MS. GLAVIN: We could go to Government Exhibit 201,
5 which I believe is in evidence, Mr. Maloney.

6 A. I don't think so. Not yet.

7 Q. It's not. Okay.

8 With respect to Government Exhibit 201, is this the
9 deposition transcript of Mr. Donziger's deposition you
10 attended?

11 A. Yes.

12 Q. And have you had an opportunity to review that transcript
13 before today?

14 A. Yes.

15 Q. If we could go to page 229 of that deposition, starting at
16 line 21. And read out loud to page 231, at line 20. And I
17 will read the questions, Ms. Champion, if you read
18 Mr. Donziger's replies.

19 (Reading)

20 "Q. You understand the Court's injunction of assigning your
21 retainer interest to Chevron, yes? That the injunction orders
22 you to do that?

23 "A. My Amazonia shares.

24 "Q. No, your interest in the judgment.

25 "A. Okay. Whatever. What are you trying to do here? Can you

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1 ask me a question? I don't know if we agree on this.

2 "Q. Paragraph 1 of the injunction says: 'The Court hereby
3 imposes a constructive trust for the benefit of Chevron, all
4 property, whether personal or real, tangible, traceable to the
5 judgment' blah, blah, blah, 'including, without limitation, all
6 rights to any contingent fee under the retainer agreement and
7 all stock in Amazonia. Donziger shall transfer and forthwith
8 assign to Chevron all such property he has now or hereafter may
9 obtain.' That's what I'm talking about.

10 "A. So why are you asking me that question in this deposition?
11 I know you tried to get me to do an assignment separate from
12 the Amazonia. If that's what you want me to do, then take
13 action with the Court. I mean, I don't -- I don't know why you
14 are asking in this deposition.

15 "Q. Well, I'm going to provide you with the transfer while
16 we're on the record, which I have marked as Exhibit 5323.

17 "A. Okay. I will take it. Do you want me to take this or is
18 this an exhibit?

19 "Q. This is an exhibit. I will give you another copy. If you
20 want to execute the exhibit copy, that's fine. I take it you
21 are not willing to execute this document today.

22 "A. This is a whole other thing I need to look at, consider,
23 and think about. So no, I'm not willing to execute this
24 document today. And if you are asking me to execute it, I need
25 some time and I will get back to you."

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1 Q. Let me show you what is marked for identification as
2 Government Exhibit 201-1. Do you see at the bottom of the page
3 it states Plaintiff's Exhibit 5323?

4 A. Yes.

5 Q. Okay. What do you recognize this to be?

6 A. This looks virtually the same as the general assignment
7 form that we had provided to him previously and asked him to
8 sign in early May.

9 THE COURT: Provided to Mr. Donziger, right?

10 THE WITNESS: Correct.

11 Q. In Plaintiff's Exhibit 5323, which is Government Exhibit
12 201-1, is this the transfer and assignment of judgment interest
13 that was presented to Mr. Donziger at his deposition?

14 A. Yes.

15 Q. Okay. And is this, I think you said, the same general
16 assignment form, which is included in Government Exhibit 114 --
17 if you could pull that up -- which was provided to Mr. Donziger
18 after the hearing.

19 A. Yes, it even has the same wrong date.

20 Q. April 3rd, 2014.

21 A. Yes.

22 Q. After that deposition of Mr. Donziger on June 25th, did
23 Chevron seek Judge Kaplan's intervention regarding this
24 assignment form?

25 A. Yes, as well as with the Amazonia share transfer.

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1 Q. Let me show you what is government exhibit -- one moment.

2 MS. GLAVIN: Move into evidence Government Exhibit
3 201-1.

4 THE COURT: That's the transcript, Mr. Kuby.

5 Are you okay on that?

6 MS. GLAVIN: It's not the transcript, your Honor.

7 THE COURT: Oh, 1. I'm sorry. Forgive me. It's the
8 form. Mr. Kuby, are you good on that?

9 MR. KUBY: I am, Judge.

10 THE COURT: I'm sorry. Thank you.

11 MR. KUBY: Do you want me to drive?

12 THE COURT: No, that's fine. Thank you.

13 (Government's Exhibit 201-1 received in evidence)

14 Q. If I can show you what is Government Exhibit No. 2047,
15 which is on the docket sheet.

16 MS. GLAVIN: We would move for admission.

17 THE COURT: Received.

18 (Government's Exhibit 2047 received in evidence)

19 Q. All right. And what is this, Ms. Champion?

20 A. This is a memorandum of law in support of Chevron
21 Corporation's motion to compel Donziger to execute an
22 unqualified transfer of Amazonia shares and a general transfer
23 and assignment of all judgment interest.

24 Q. And if we could go to ECF page 5 of Chevron's motion. And
25 if you could read what Chevron requested the Court to do.

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1 A. Pursuant to the Court's March 4th, 2014 judgment, and May
2 16th memorandum opinion, Chevron respectfully requests that the
3 Court issue an order requiring Donziger to execute both the
4 share transfer form and the transfer and assignment of judgment
5 interest without modification or qualification by a date
6 certain.

7 Q. Ms. Champion, did Mr. Donziger oppose this motion to
8 compel?

9 A. Yes.

10 Q. I'm going to show you what is Government Exhibit No. 2054,
11 which is in the docket.

12 MS. GLAVIN: Your Honor, move for admission.

13 THE COURT: Received.

14 (Government's Exhibit 2054 received in evidence)

15 Q. And if you could read the first four sentences of
16 Mr. Donziger's opposition.

17 A. The undersigned hereby opposes Chevron's motion to compel.
18 While Chevron claims its motion is to compel Donziger to
19 execute an unqualified transfer of Amazonia shares, the fact
20 remains that the undersigned already executed a transfer of
21 these shares that was without any legal reservation.

22 What seems to perturb Chevron and the Court is the
23 expression of my views and background understanding of certain
24 facts simultaneously with the transfer in an accompanying
25 addendum of understandings. These understandings, which did

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1 not constrain the transfer or reserve any legal rights, are
2 expressions of my views, positions, mental impressions,
3 opinions, and awareness of certain objective facts. As such,
4 they cannot be forcibly changed or suppressed by court order
5 without directly violating the First Amendment.

6 Q. Let me stop you right there.

7 There is a footnote 1. Could you read what
8 Mr. Donziger stated in footnote 1?

9 A. The shares are utterly obsolete and meaningless, as already
10 explained in prior briefing, only deepening the absurdity of
11 the continued litigation on this point.

12 Q. If you could go to ECF page 3 of Mr. Donziger's opposition
13 filed July 12th, 2018. Start with "Finally," and read to the
14 bottom.

15 A. Finally, Chevron uses its motion to advance a whole new
16 demand on me that is unconnected from the specific instruction
17 from the Court regarding the Amazonia shares that I have been
18 attempting to comply with.

19 In the second part of its motion, Chevron demands
20 execution, presumably in gag order fashion as well, of a
21 general transfer and assignment of judgment interest form based
22 on language in the original RICO judgment that directed me to
23 transfer to Chevron all property in my possession that is
24 traceable to the *Lago Agrio* judgment. The language in the
25 original judgment is wildly uncertain in scope and, for that

L5AVDON3

Champion - direct

1 reason, it was more carefully interpreted by the Court itself
2 in what I have taken as the clarification order at docket 1901,
3 where the Court made clear that property was traceable to the
4 *Lago Agrio* judgment if it flowed from a collection of proceeds
5 on the *Lago Agrio* judgment.

6 Because there has been no such collection, there is no
7 property to be assigned to Chevron at this time. Should any
8 property subject to the terms of the RICO judgment come into my
9 possession or control, I will comply with the terms of the
10 judgment, as I have repeatedly assured the Court.

11 Q. Ms. Champion, I want to turn your attention to August 15 of
12 2018. Did Judge Kaplan rule on Chevron's motion to compel
13 Mr. Donziger to execute an unqualified transfer of his stock in
14 Amazonia, as well as to compel Mr. Donziger to execute an
15 assignment to transfer of a general assignment of all of his
16 property?

17 A. Yes, he did.

18 Q. Property traceable to the Ecuadorian judgment. Okay.

19 Showing what's Government Exhibit No. 2072, which is
20 on the docket.

21 MS. GLAVIN: Move for admission?

22 THE COURT: Received.

23 (Government's Exhibit 2072 received in evidence)

24 Q. If we could go to ECF page 4 of this opinion and order by
25 Judge Kaplan. And if you could read what Judge Kaplan stated

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Champion - direct

1 with respect to A, the unqualified Amazonia transfer.

2 A. Donziger resists Chevron's request for an order requiring
3 him to sign an unqualified stock power, transferring and
4 assigning all of his right, title, and interest in the Amazonia
5 shares in the form sought by Chevron essentially on a single
6 ground. He contends that the addenda that he added to the
7 stock power he previously executed are expressions of his
8 views, positions, mental impressions, opinions, and awareness
9 of certain objective facts. As such, they cannot be forcibly
10 changed or suppressed by court order without directly violating
11 the First Amendment.

12 An order requiring him to execute a specific form of
13 stock power without amendment or qualification, he asserts,
14 would be a pure gag order directing me not to speak
15 inconvenient truths and, therefore, would be repugnant to the
16 First Amendment. Unsurprisingly, he cites no legal authority
17 for this argument, which is entirely without merit.

18 The order that Chevron requests would not force
19 Donziger to change his views or to utter any words at all,
20 whether inconvenient truths or anything else. It would require
21 him only to execute and deliver a simple form of stock power,
22 without any qualification or addition of anything beyond the
23 necessary signatures to carry out a provision of a judgment.
24 And Donziger is grievously mistaken in thinking that the Court
25 cannot constitutionally require him to do so.

L5AVDON3

Champion - direct

1 Among other considerations, the requested order would
2 not limit Donziger in expressing himself when, as, and where --
3 save for the stock power -- he wishes. The prohibition on
4 adding anything other than his signature to this legal
5 instrument would be entirely content neutral. It would
6 prohibit any and all additions or commentary, regardless of
7 context. The requested order would not violate the First
8 Amendment.

9 Q. If you could turn to ECF page 6.

10 With respect to -- actually, go back to page 5 for a
11 moment.

12 Looking at section B of Judge Kaplan's opinion, the
13 "judgment interest" assignment. And Judge Kaplan states that
14 Donziger resists this also. He asserts that the "language in
15 the original judgment is wildly uncertain in scope," though he
16 points to no particular uncertainty.

17 And he goes on to claim that the Court in its opinion,
18 largely denying Donziger's motion for a stay of that judgment
19 pending appeal, therefore subsequently limited its scope to
20 money or other property collected on the Ecuadorian judgment.

21 Now, if you could read, Ms. Champion, the next
22 paragraph of Judge Kaplan discussing Mr. Donziger's arguments.

23 A. As an initial matter, there is no uncertainty in the
24 language of paragraph 1 of the judgment or, consequently, in
25 the language of the form of assignment that Chevron seeks to

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Champion - direct

1 require Donziger to execute. The phrase "property," whether
2 personal or real, tangible or intangible, vested or contingent,
3 is perfectly clear. Nor is there any uncertainty inherent in
4 the limitation of the operation of paragraph 1 to property
5 traceable to the Ecuadorian judgment or the enforcement of the
6 judgment.

7 The concept of traceability of property to particular
8 sources, events, or activity is extremely well-established in
9 the law. Money or other property is traceable to a given
10 source, event, or activity if its acquisition is attributable
11 to that source, event, or activity. To put it another way,
12 proof that the proceeds of the event or activity in the quoted
13 case money laundering enabled the defendant to acquire the
14 property, makes that property traceable to the event or
15 activity.

16 So any property, one, that Donziger, A, had as of the
17 date of the judgment in this case or, B, acquired from the date
18 of the judgment until now, or C, hereafter may acquire and,
19 two, that Donziger was enabled to acquire by the Ecuadorian
20 judgment or its enforcement is traceable to that judgment. It
21 therefore is or upon acquisition subsequent to the date of the
22 judgment, became or will become, depending on the timing of the
23 acquisition, subject to the constructive trust imposed by the
24 judgment in this case.

25 Paragraph 1 of that judgment requires Donziger to

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Champion - direct

1 transfer and assign such property to Chevron forthwith. But
2 that does not necessarily require that Chevron's motion in this
3 respect be granted in every detail.

4 Keep going?

5 Q. Yes.

6 A. Donziger, as of the date of the judgment in this case,
7 owned certain property that he clearly and indisputably had
8 obtained that is traceable to the Ecuadorian judgment. His
9 professional limited liability company, Donziger Associates
10 PLLC, a defendant in this case and one of the parties to the
11 judgment here, pursuant to its January 5th, 2011 retainer
12 agreement, owned a contract right to a contingency fee and
13 other monies.

14 As this Court previously held in a ruling that
15 Donziger did not challenge on appeal, that right to a
16 contingent fee and the fee itself are property; they are
17 subject to execution and attachment. And they were and remain
18 immediately assignable.

19 Keep going?

20 Q. Yes.

21 A. Prior to the entry of the Ecuadorian judgment, Donziger's
22 retainer agreement was an executory contract for the payment of
23 his retainer and reimbursement of his expenses, plus a transfer
24 of a future fund, i.e., his share of the collections on the
25 judgment upon which specific performance would be granted when

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Champion - direct

1 the fund came into existence. The fund came into existence
2 when there was a judgment, i.e., on February 14th, 2011. His
3 rights to payments when the fund came into existence, i.e.,
4 when judgment was entered, as well as his rights against that
5 fund, once it came into being, were and are respectively
6 assignable.

7 Accordingly, his claims to the contingent fee, to his
8 monthly retainer, and to expense reimbursements at all relevant
9 times, were, and remain property subject to execution and
10 attachment under New York law.

11 (Continued on next page)

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L5AAADON6

Champion - Direct

1 BY MS. GLAVIN:

2 Q. Continue on with the next page starting with "accordingly"?

3 A. Accordingly, it is entirely plain that this particular set
4 of contract rights have been subject since March 4, 2014, to
5 Donziger's express obligation to transfer and assign them
6 forthwith to Chevron and obligation that he has disregarded for
7 over four years. The court will order Donziger to execute an
8 unqualified, un-supplemented document that conforms in
9 substance to the requested document insofar as it relates to
10 Donziger's rights to a contingent fee.

11 Q. Stop you right there. Footnote number 18, could you read
12 Footnote Number 18 which Judge Kaplan wrote?

13 A. Nor is there anything in the court's April 25, 2014 order
14 largely denying Donziger's motion for a stay pending appeal
15 that even remotely excused Donziger either pending appeal or
16 otherwise from complying with that direction. Donziger's
17 contention with respect to the stay decision is that the stay
18 decision limited to the judgment's impact on property traceable
19 to the Lago Agrio judgment to property that flowed from a
20 collection of proceeds on the Lago Agrio judgment.

21 Whatever the merits of that contention with respect to
22 other property which the court will address in due course in
23 connection with another pending motion, it has none at all with
24 respect to paragraph one specific requirement that Donziger
25 transfer and forthwith assign to Chevron all rights to any

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Champion - Direct

1 contingent fee under the retainer agreement and all stock in
2 Amazonia. Indeed, the fact that Donziger acknowledges that he
3 is obliged to assign to Chevron the Amazonia stock though he
4 quibbles with the form of the stock power evidences precisely
5 that fact as the rights under the retainer agreement to a
6 contingent fee and the Amazonia stock are treated in precisely
7 the same way.

8 Q. Turn to ECF page nine and read the two sentences starting
9 with "but the court does not see".

10 A. But the court does not see what purpose would be served by
11 now requiring Donziger to execute a form of transfer and
12 assignment with respect to unidentified undescribed property as
13 such an instrument would leave entirely unclear what has been
14 transferred and assigned. Accordingly, in the exercise of
15 discretion it declines now to require the execution of an
16 instrument so broad.

17 Q. Ms. Champion, if you could go to Judge Kaplan's conclusion
18 with respect to what he ruled in ordered.

19 A. Accordingly, Chevron's motion is granted to the extent that
20 Steven Donziger shall execute acknowledge before a notary
21 public and deliver to Chevron's counsel of record in this case
22 on or before August 21, 2018 the following documents:

23 A transfer document for the Amazonia shares in the
24 form annexed as Exhibit Two to the declaration of Anne Champion
25 saved at the correct date shall be included the executed

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Champion - Direct

1 document rather than blank, June 2018, a transfer and
2 assignment in the form annexed to this order as Exhibit One.

3 Donziger shall not qualify, affix or add anything to
4 either document except that he shall, A, sign his name his
5 signature is required and, B, procure certificates of notaries
6 public to Donziger's acknowledgment as required.

7 Q. Now, Ms. Champion, the transfer document for the Amazonia
8 shares that Judge Kaplan directed Mr. Donziger sign, was that
9 the same transfer document that that had been provided by you
10 to Mr. Donziger months earlier which is -- pull up Government
11 Exhibit 2048-2 in the record.

12 Move for admission?

13 THE COURT: Received.

14 (Government's Exhibit 2048-2 received in evidence)

15 A. Yes. Substantially the same I think, again, the transferee
16 was left blank in the original form.

17 Q. And with respect to what Judge Kaplan directed at paragraph
18 number two, a transfer and assignment in the form of annexed to
19 his order as Exhibit One --

20 Can we pull up Exhibit One to Judge Kaplan's
21 August 15, order.

22 Exhibit One, how did Judge Kaplan modify this transfer
23 and assignment form that he directed Mr. Donziger to sign and
24 notarize?

25 A. He limited it in paragraph one to the January 5, 2011

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Champion - Direct

1 retainer agreement.

2 Q. So, in other words, it only was a transferred assignment
3 form limited to Mr. Donziger's rights, title and interests to a
4 contingent fee under the retainer agreement dated January 5,
5 2011?

6 A. Yes.

7 Q. Now, Judge Kaplan's order directing Mr. Donziger to execute
8 and acknowledge before a notary public and deliver to Chevron
9 on August 21, 2018, those two documents on August 21st of 2018
10 did Mr. Donziger execute those two documents, have them
11 notarized and delivered to Chevron?

12 A. What was the date you said?

13 Q. August 21, 2018.

14 A. No.

15 Q. I show you what is a Government Exhibit 2075, the docket
16 entry in the case.

17 Move for admission into evidence?

18 THE COURT: Received.

19 (Government's Exhibit 2075 received in evidence)

20 Q. Is this a August 20, 2018 letter from Mr. Donziger?

21 A. Yes.

22 Q. Mr. Donziger states, Judge Kaplan, I write in regard to the
23 court's recent order dated August 15, 2018, docket 2072, that I
24 execute documents transferring certain property interests to
25 Chevron Corporation. I am currently out of the country through

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Champion - Direct

1 Labor Day with no way to access a U.S. qualified notary. And I
2 am not sure if a foreign notary would meet the court's
3 requirement. Additionally, I am seeking adequate counsel on
4 the issue of transferring my contingent fee interests. My
5 clients have forbidden me to make such a transfer and made it
6 clear that despite the court's order, a transfer would be
7 considered an act of cooperation with an enrichment of Chevron
8 in violation of my fiduciary duties toward them that could
9 result in my termination. I respectfully request a modest
10 extension of time through the end of the week after Labor Day,
11 i.e. to September 7, to return from travel and properly address
12 the ethical issues raised by the ordered transfer.

13 I am going to show you what is Government Exhibit 2079
14 which is a docket entry.

15 Move for admission.

16 THE COURT: Received.

17 (Government's Exhibit 2079 received in evidence)

18 Q. And, Ms. Champion, could you read Judge Kaplan's order on
19 Mr. Donziger's motion seeking to extend time.

20 A. The judgment in this case entered March 4, 2014 required
21 Donziger to execute instruments transferring and assigning
22 certain property to Chevron. Donziger failed to comply.
23 Finally, on August 15, 2018 after extensive prior proceedings
24 the court ordered Steven Donziger to execute, acknowledge
25 before a notary public and deliver to Chevron's counsel of

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Champion - Direct

1 record on or before August 21, 2018 two particular legal
2 instruments giving partial effect those affects of the 2014
3 judgments.

4 Donziger still had not complied, waiting until the
5 last moment as he has often done. Donziger late yesterday
6 filed a letter motion seeking an extension of time until
7 September 7, 2018. He says that he is out of the country and
8 that he might not be able to get a notary where ever he is.

9 He rehashes moreover an argument previously made and
10 rejected, and he does not even say that he will comply with the
11 order with the benefits of the extension he seeks. Indeed, he
12 at least arguably implies that he has no intention of doing so.

13 Q. OK. Stop you right there and go to the next page.

14 A. Keep reading?

15 Q. Yes?

16 A. Donziger's first argument for an extension is that he is
17 out of this country, has no way to access a U.S. notary and is
18 unsure that foreign notary would meet the court's requirement.
19 That asserted problem is readily solved. According to the U.S.
20 State Department, U.S. consular's officers at U.S. embassies
21 and consulates abroad provide notarial services, including
22 acknowledgments for U.S. citizens.

23 Accordingly, Donziger may sign the required documents,
24 take them to any U.S. Embassy or consulate and have the
25 requisite acknowledgments affixed.

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If he is in Ecuador, as perhaps is the case, that can be accomplished in Quito where he regularly has had an office in the past or in Guayaquil, G-U-A-Y-A-Q-U-I-L. Indeed, the website of U.S. Embassy in Ecuador states "notarial services are available to U.S. citizens and foreign nationals for documents to be used in the United States. Notary services are executed by consular officers and may include documents to be signed before them, statements made under oath, powers of attorney, certified translations, affidavits, acknowledgments, among others, closed quote.

Donziger next contends that his clients have forbidden me to make such a transfer and made it clear that despite the court's order a transfer would be considered an act of cooperation with an enrichment of Chevron in violation of my fiduciary duties toward them that could result in his termination.

He claims that he therefore, is seeking counsel to advise him in this situation. But this ship sailed long ago. And in any case the assertion that his clients could terminate him if he complies with the court's order is of extremely dubious voracity.

The judgment in this case required Donziger to make the two transfers that are the subject of the court's recent order. Indeed, the recent order was occasioned primarily by Donziger's long defiance of the relevant provisions of the

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Champion - Direct

1 judgment.

2 Donziger had every opportunity to challenge those
3 provisions of the judgment on appeal but he did not. Under
4 established law a district court legal decision made at one
5 stage of litigation unchallenged in a subsequent appeal when
6 the opportunity to do so existed becomes the law of the case
7 for future stages of the same limitation and parties are deemed
8 to have waived the right to challenge that decision at a later
9 time.

10 Accordingly, Donziger is obliged to comply with the
11 judgment and the court's order even if doing so would be
12 objectionable to Donziger's clients and even if they would
13 terminate him for doing so which for reasons discussed below is
14 highly unlikely.

15 Keep going?

16 Q. Yes.

17 A. Moreover, all of this relates back to events during the
18 course of and following Chevron's motion to hold Donziger in
19 contempt by reason in part of his failure to transfer his
20 Amazonia shares. The vehicle through which he hopes to be paid
21 contingent fee based on any recovery in the Ecuadorian
22 litigation.

23 Those events would be highly instructive in considering
24 whether there would be any genuine need for further
25 consultation even if Donziger's obligation to comply with the

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1 order were open to debate. The fact of the matter is that he
2 intermittently has made substantially this argument which the
3 Court has rejected while he intermittently has claimed also
4 that he would sign whatever the court required or that there is
5 no point in ordering the transfer of the Amazonia shares either
6 because the company is defunct, because Chevron already owns
7 the shares or because the transfer of the shares would cause
8 him grave and irreparable loss.

9 To wit, August 14, 2014, in response to Chevron's
10 letter demanding transfer Donziger wrote "my clients have
11 informed me via the directors of Amazonia that if any transfer
12 of stock is effectuated by me to any entity, those shares will
13 be divested immediately under the bylaws of the entity that
14 holds the shares. As you know my clients do not recognize
15 Judge Kaplan's assertion of jurisdiction in this matter.

16 The upshot is that a simple transfer to the clerk's
17 office of my Amazonia shares would in practice mean the
18 complete divestiture and potentially irretrievable loss of more
19 than two decades of labor on the part of me and some of my
20 colleagues". Thus, at that writing Donziger was taking the
21 position that the required share transfer would have
22 catastrophic consequences for him.

23 March 25, 2018, Donziger asserted what he claimed was
24 his understanding that the Amazonia entity in Gibraltar either
25 no longer exists or is entirely owned by Chevron after Chevron

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1 forced it into receivership and then added that a transfer of
2 shares were the entity functions and/or before Chevron took it
3 over would have prejudiced his clients.

4 His point at that time thus was that he could not be
5 found in contempt for failing to transfer the shares because
6 the company in question had passed out of existence or entirely
7 into Chevron's hands.

8 May 8, 2018 argument on contempt motion.

9 Donziger asserted that Chevron has my shares already
10 and that however, I will be more than happy to do whatever the
11 court instructs because I think this is a complete and
12 ridiculous issue. Note that there was no mention of the bylaw
13 transfer restrictions or his client's supposed views. Of
14 course, as is clear from the Court's August 15, 2018 memorandum
15 and order, docket 2072, Donziger was not happy to do as
16 instructed.

17 It became necessary to issue the order that is the
18 subject of this present application for an extension. The
19 point for present purposes is that Donziger has asserted for
20 over four years, albeit on and off, that there is a transfer
21 restriction in the corporate documents that might have an
22 affect on the required transfer of Amazonia shares and
23 suggested that his clients would not be happy with such a
24 transfer. So, he knew when Chevron moved on June 27, 2018 to
25 compel him to execute under qualified transfers that the bylaw

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1 restriction and his client's reported views could be issues in
2 his eyes.

3 He had plenty of time to consult and does not deny
4 having consulted and does not deny in having consulted other
5 counsel in that connection in responding to Chevron's motion to
6 compel execution of the transfer documents.

7 Presumably his opposing papers said whatever he had to
8 say on that subject and the court ruled on Chevron's motion.
9 Donziger now is under a clear definitive and unequivocal
10 obligation to execute certain documents.

11 He may do so and thereby comply with the order or
12 disobey the order and deal with any consequences.

13 Finally, the court notes in passing there is no
14 realistic chance that Donziger would be terminated if he
15 complied with the court's order.

16 Donziger has been at pains recently to say that he has
17 only one client at this point, the Amazon Defense Fund. As the
18 court found at trial the ADF is an entity formed by Donziger
19 with his best friend in Ecuador, Luis, L-U-I-S, Yanza,
20 Y-A-N-Z-A and perhaps others. Yanza is the executive director
21 and is intimately involved with Donziger in this ongoing saga.
22 As far as the record discloses, they control the ADF. In the
23 circumstances and bearing in mind Donziger's lack of
24 credibility in the past and failure to submit affidavits or
25 declarations substantiating his factual contentions here, I

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1 decline credit his contentions that the ADF actually would fire
2 him if he complies with the court's order, not that it would
3 alter the result if that really were likely.

4 Conclusion. Donziger's letter motion for an extension
5 of time is granted only to the following extent:

6 Donziger shall execute two sets of originals of the
7 required forms on or before August 22, 2018. He shall send one
8 set which need not have notarized acknowledgments to Chevron's
9 lead counsel no later than August 22, 2018 by overnight
10 courier. In order to facilitate obtaining notarized
11 acknowledgments at the U.S. Embassy or Consulate, the Court
12 will extend its time within which to do that and to deliver
13 fully executed documents to Chevron.

14 Donziger shall acknowledge his signatures on the two
15 documents constituting the second set of originals before a
16 consular official at a U.S. Embassy or Consulate no later than
17 August 28, 2018. No later than August 29, 2018 he shall place
18 that fully executed acknowledged and notarized set of originals
19 in the hands of an overnight courier for the speediest
20 available delivery to Chevron's lead counsel.

21 Q. Ms. Champion, I want to turn your attention to August 22,
22 the date by which Judge Kaplan directed Mr. Donziger to send a
23 set of originals that don't need to have a notarized
24 acknowledgment to Chevron's lead counsel by overnight courier.

25 I am showing you what is Government Exhibit 123, this

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Champion - Direct

1 particular e-mail Ms. Champion is from Mr. Donziger to
2 Mr. Mastro. You are not on this e-mail; is that right?

3 A. Correct.

4 Q. But did you receive a copy of that e-mail on or about
5 August 22, 2018?

6 A. I did.

7 MS. GLAVIN: Move for admission of Government Exhibit
8 123.

9 MR. KUBY: Without objection.

10 THE COURT: Received.

11 (Government's Exhibit 123 received in evidence)

12 Q. Ms. Champion, this August 22, e-mail from Mr. Donziger to
13 Mr. Mastro attaches executed transfers in a letter. Let's go
14 to the first transfer form. This is the assignment of the
15 contingent fee interest granted by the January 5, 2011 letter
16 agreement.

17 Did Mr. Donziger sign this?

18 A. He did.

19 Q. Was the form notarized?

20 A. It was not.

21 Q. But he wasn't required to notarize it as of August 22; is
22 that correct?

23 A. Correct.

24 Q. Let's go to the second form. Is this the shared transfer
25 form for his Amazonia shares?

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1 A. Yes.

2 Q. And again, did he sign this?

3 A. He did.

4 Q. But was the form notarized?

5 A. No.

6 Q. And if you go to the third attachment to this e-mail the
7 August 22, 2018 letter addressed to Mr. Mastro, Mr. Donziger
8 writes Mr. Mastro, I attached forthwith via e-mail two executed
9 transfer agreements related to my contingent interests in the
10 Ecuador judgment that I signed under order from the district
11 court and under threat of contempt notarized versions and
12 originals will be provided as soon as practicable given my
13 location and family obligations but no later than September 4,
14 2018.

15 Mr. Donziger then states he wishes, I also wish to
16 make the following points about my first amendment protected
17 view of the transfer agreements. I sign each of these
18 agreements under duress and under threat of contempt based on a
19 RICO judgment that contradicted findings of four lawyers of
20 courts in Ecuador and 17 appellate judges in the country,
21 Ecuador is the general view under which your client Chevron
22 insisted this matter be resolved and -- intercepted
23 jurisdiction.

24 With respect to the other bullet points, is
25 Mr. Donziger conveying his view with respect to the validity of

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Champion - Direct

1 the RICO judgment?

2 A. I can't guess what's in Donziger's mind but you know his
3 statements are that he is signing the agreements under duress
4 and under threat of contempt of court.

5 Q. Can we go to the next page. Very bottom he states, that
6 said, I hereby transfer clean copies of both transfer documents
7 consistent with the order of the district court. Again,
8 notarized versions ands will be provided as soon as practicable
9 but no later than September 4 of 2018.

10 So, turning your attention, Ms. Champion, to
11 September 4 of 2018, did Mr. Donziger -- did you receive the
12 two notarized transfer forms that Mr. Donziger said he would
13 provide to you?

14 A. No.

15 Q. What did you get?

16 A. I think we got an e-mail saying he would try to get it to
17 us within a few days.

18 Q. I am going to show you what is Government Exhibit 2085-1
19 which is in the docket and move for admission?

20 THE COURT: Received.

21 (Government's Exhibit 2085-1 received in evidence)

22 A. We got the assignment. He gave us a notarized version of
23 the assignment of the retainer interests eventually within that
24 time period but not the notarized version of that shared
25 transfer form.

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1 Q. Meaning the share transfer form for the Amazonia shares?

2 A. Correct.

3 Q. So, you did not receive the notarized?

4 A. No, not until later.

5 Q. Did you follow-up on that with Mr. Donziger?

6 A. Yes.

7 Q. Going to turn your attention to Government Exhibit number
8 126. Go to the next page.

9 Ms. Champion, do you recognize this e-mail exchange
10 with Mr. Donziger?

11 A. Yes.

12 MS. GLAVIN: Move it into evidence, your Honor?

13 THE COURT: Received.

14 MS. TRIVEDI: We have no objection, judge.

15 THE COURT: Thank you, counsel.

16 Q. Start with your e-mail to Donziger on September 7, 2018 at
17 11:33 p.m. Dear Steven, following up on our discussion earlier
18 today you do need to execute and have notarized the share
19 assignment agreement attached here to be in compliance with the
20 court's orders. The May version will not suffice. Can we
21 arrange to have to picked up by messenger on Monday? Please
22 confirm. Thank you.

23 What was the discussion that you had with Mr. Donziger
24 earlier that day on September 7?

25 A. I called him to ask whether he had inadvertently omitted a

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1 notarize share transfer form and told him that we did need a
2 notarized version of that form.

3 MR. KUBY: Judge, excuse me. Mr. Donziger will
4 voluntarily waive his right to be presents if it's OK with the
5 Court for about three minutes?

6 THE COURT: Yes, sir.

7 MR. KUBY: And we will continue in his absence.

8 THE COURT: Yet. Thank you.

9 MR. KUBY: Thank you, judge.

10 Q. Anything else on that conversation with Mr. Donziger or
11 what he said to you?

12 A. I don't recall anything else.

13 Q. Did he say anything about -- you mentioned in your e-mail
14 the May version will not suffice.

15 A. Yeah.

16 Q. Come up on the call?

17 A. Yeah. I think he mentioned I already notarized that form a
18 few months ago.

19 Q. OK. When you say "the May version would not suffice", can
20 we go to Government Exhibit 2003-3 which is in evidence, is
21 this the May version you were referring to?

22 A. Correct, the one with the attached addendum of
23 understanding.

24 Q. Go back to Government Exhibit 126.

25 You then e-mail Mr. Donziger again on September 9 of

L5AAADON6

Champion - Direct

1 2018 at 11:44 a.m. You state: Dear Steven, following up on
2 this we will need this properly executed tomorrow or we will
3 need to seek relief from the court. Please, let me know as
4 soon as when you expect to get it to me. Turning to the next
5 e-mail in that chain, this response from Mr. Donziger to you on
6 September 9. I can do there tomorrow and you can pick it up.
7 I'll let you know when ready. Please send another copy of the
8 form you want signed and notarized. As I said, I believe I
9 already executed what you are requesting.

10 Go to the next e-mail on this chain.

11 On September 10, 2018, you wrote:

12 Steven, you said you would do this today. When can we
13 pick up the package. Thanks.

14 The next e-mail in the chain is from Mr. Donziger.

15 Sorry. The arbitral ruling and the holiday changed my
16 sked, S-K-E-D. I am leaving early in the morning. I will have
17 it by close of biz, Thursday or latest Friday. Thanks.

18 Now, Ms. Champion, had Mr. Donziger gotten any relief
19 from Judge Kaplan's August 21, 2018 order directing him to send
20 a notarized version, signed and notarized version of his
21 Amazonia shared transfer agreement without any alterations or
22 modifications by overnight mail on August 29?

23 A. No.

24 Q. If we could go to Government Exhibit 127. Do you recognize
25 this, Ms. Champion?

L5AAADON6

Champion - Direct

1 A. Yes. This looks like a further email exchange between me,
2 Mr. Donziger and others regarding his refusal to provide us
3 with a notarized version of the Amazonia shared transfer form.

4 Q. If we could start at your e-mail on September 13 of 2018 at
5 7:11 p.m.?

6 THE COURT: Do you want to move it into evidence?

7 MS. GLAVIN: I'm sorry, your Honor.

8 MR. KUBY: We're good.

9 MS. GLAVIN: Move into evidence.

10 THE COURT: Received.

11 (Government's Exhibit 127 received in evidence)

12 Q. So we are at for Bates number purposes Donziger 103030.

13 Go to Steven Donziger's e-mail to you on Thursday
14 September 13 at 2018 at 7:11p.m.?

15 THE COURT: Can you please indicate your view of the
16 legal basis for your request that I re-execute the Amazonia
17 transfer form and have it notarized when I already did that
18 several weeks ago. Thanks. Steven.

19 Go up to the next e-mail in this chain. Sent e-mail
20 from you, Ms. Champion to Steven Donziger, September 14 of 2018
21 at 2:27 p.m.

22 Dear Steven, the court ordered you to execute and
23 notarized the Amazonia share transfer document on August 15
24 docket 2072 at nine. And again on August 21, docket 2079 at 5.
25 Dates that have long passed. You're in contempt of court's

L5AAADON6

Champion - Direct

1 orders. If we do not receive the signed notarized documents by
2 four p.m. today we will proceed to address this issue with the
3 court. Thank you.

4 Go to the next e-mail in the chain. Mr. Donziger
5 responding to you on September 14, 2018 at 5:07 p.m. And it
6 appears the Court was unaware I had already executed the order
7 several weeks earlier when it issued the order you cite. Since
8 the order had previously been complied with, I am not going to
9 execute the same document again unless ordered by the court.
10 If your issue is with the addendum I had given you a clean
11 version of the transfer document per the court's order in May.
12 Although, to be clear, I stand by the addendum from them from
13 then in the more recent one I submitted with the other transfer
14 form as is my First Amendment right. Thanks.

15 We go up to your response, Ms. Champion. You respond
16 later that day, September 14 at 2018, 11:22 p.m. Dear Steven,
17 the transfer form, the shared transfer form you executed in May
18 reflected your quote, addendum, end quote. And was held by the
19 court to be insufficient to comply with the judgment. The
20 court was indeed aware of this as it was filed with the court
21 in May. Docket 2003-3 attached and is quoted in the court's
22 May 16 order, docket 2006 attached. This share transfer form
23 you executed in August also attached is not notarized.
24 Accordingly, you have not complied with the court's order of
25 August 15, docket 2072 at nine attached requiring you to,

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Champion - Direct

1 quote, execute, acknowledge before a notary public and deliver
2 to Chevron's counsel of record in this case on or before
3 August 21, 2018, end quote, the shared transfer form docket
4 2048 docket two attached without, quote, affixing or adding
5 anything to either document, end quote, 2072 at nine.

6 You have also not complied with the court's order of
7 August 21, requiring you, quote, no later than August 29, 2018,
8 end quote, to transmit a quote wholly executed acknowledged and
9 notarized version of the shared transfer form to, quote,
10 Chevron as lead counsel, end quote, docket 279, 2079 at five to
11 six attached.

12 I understand from your last e-mail that you are
13 refusing to provide a notarized version of the Amazonian shared
14 transfer as ordered. We will thus be seeking relief from the
15 court. If my understanding is not correct, please, let me know
16 now.

17 Did Mr. Donziger indicate to you that your
18 understanding was not correct?

19 A. No.

20 Q. Showing what you is Government Exhibit 2084. This is on
21 the docket.

22 Your Honor, move for admission?

23 THE COURT: Received.

24 (Government's Exhibit 2084 received in evidence)

25 Q. Ms. Champion, this is a memo of law filed by Chevron on

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Champion - Direct

1 September 17th of 2018. What was Chevron seeking in this?

2 A. This is a motion to hold Steven Donziger in contempt of
3 court for his failure to comply with the court's August 15 and
4 21, 2018 orders.

5 Q. If you could go to ECF page seven of that order. Actually,
6 ECF page eight. My mistake.

7 In this brief states that given the brazen and years' long refusal by Donziger to properly execute a transfer of this
8 Amazonia shares to Chevron, Chevron submits that the court
9 should impose monetary sanctions on Donziger until he provides
10 Chevron's counsel a fully executed acknowledged and notarized
11 original of docket 2048-2.

12 Now, after Chevron ruled to hold Mr. Donziger in
13 contempt did Mr. Donziger note, execute and notarized shared
14 Amazonia shares that were at issue you --

15 A. He ultimately did at the beginning of October I believe.

16 Q. Showing you what is Government Exhibit 2104-1, do you
17 recognize this document?

18 A. Yes. This is the share transfer form for Mr. Donziger's
19 Amazonia shares dated October 5, 2018 and it is notarized.

20 MS. GLAVIN: Move into evidence, your Honor?

21 THE COURT: Received.

22 (Government's Exhibit 2105 received in evidence)

23 Q. Show you what is a Government Exhibit 2105 also on the
24 docket go to page two. Is this an order by Judge Kaplan on

L5AAADON6

Champion - Direct

1 October 12, 2018?

2 A. Yes.

3 Q. What did Judge Kaplan rule on contempt motion?

4 A. He states that it meaning Chevron now acknowledges that
5 Donziger recently executed, acknowledged before a notary and an
6 delivered the document that was the subject of the orders
7 although, he did so very belatedly. In the circumstances to
8 impose coercive sanctions to compel compliance with the orders
9 is denied as mute.

10 Q. Now, Ms. Champion, did you come to learn that Mr. Donziger
11 had entered into another agreement that had a --

12 THE COURT: Are we changing topics now?

13 MS. GLAVIN: Yes.

14 THE COURT: Is this a convenient time to break?

15 MS. GLAVIN: Yes, your Honor.

16 THE COURT: All right. The witness may step down.

17 Ms. Glavin, I'm not sure we need to have all of this
18 read to us. Is there a better way to do it quicker?

19 MS. GLAVIN: I'll regroup over the night.

20 THE COURT: I don't think you need to read the whole
21 thing. I can read it. You can point out to me what you want
22 me to read but I think we can go more quickly here.

23 MS. GLAVIN: OK.

24 THE COURT: Is there anything else counsels wishes to
25 discuss?

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Champion - Direct

1 MR. KUBY: Start time tomorrow, judge?

2 THE COURT: What do you want? You want ten? I'll
3 give you 9:30.

4 MR. KUBY: OK then, I want 10:30.

5 THE COURT: You don't get that.

6 MR. KUBY: 10:15?

7 THE COURT: No.

8 MR. KUBY: 9:55.

9 THE COURT: OK. 9:55.

10 Good evening, folks.

11 (Adjourned to May 11, 2021, at 9:55 a.m.)

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